DURATION OF COPYRIGHT TERM OF PROTECTION

Written comments submitted for the hearing ... 1993

before the

United States Copyright Office

Library of Congress

Docket RM 93-8

Randleman Police Department

101 Hilliary St. • Randleman, N.C. 27317 • Phone 919-498-2601

JOE FARI
Police Ch

November 19, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader:

I am writing to express my opposition to extending copyright for works for hire from 75 years to 95 years and I also oppose all attempts to revive copyrights of films already in public domain, to wit: Docket No. RM 93-8.

Thank you very much.

Very Respectfully Yours,

J. L. Farlow

J. L. Farlow
Chief of Police

RENFIELD PRODUCTIONS

November 29, 1993

GENERAL COUNSEL OF COPYRIGHT
NOV 29 1993
RECEIVED

Comment Le
RM 93-8
No. 72

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100, Washington DC 20540

FAX: 202-707-8366

Dear Ms. Schrader:

Attached is a re-typed and corrected version of my faxed letter to you on November 24th. We inadvertently left out some information in the original and would *request that you enter this letter into the written record for Docket R.M. 93-8.*

Thank you.

Sincerely,

Betty S. Moos
Assistant to JOE DANTE

CC: Senator Dennis DeConchini, Fax 202-224-2303
Rep. William J. Hughes, Fax 292 225-3737

Post-it™ brand fax transmittal memo 7671 | # of pages ▸

To Dorothy Schrader	From Joe Dante
Co.	Co.
Dept.	Phone #
Fax # 202-707-8366	Fax # 818-733-0103

Universal Studios · 100 Universal City Plaza · Bungalow 424 · Universal City, CA 91608
Phone: (818) 777-8330 FAX: (818) 733-0103

Renfield Productions

November 29, 1993

GENERAL COUNSEL OF COPYRIGHT
NOV 29 1993
RECEIVED

Comment Letter
RM 93-8
No. 72

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100, Washington DC 20540

Via Fax: 202-707-8366

Dear Ms. Schrader:

As a member of the Committee for Film Preservation and Public Access, I am writing to state my opposition to the proposals for extending copyright protection for works for hire from 75 to 95 years. These proposals were discussed at the September 29th, 1993 Copyright Office hearings.

As a director of many major motion pictures, much of my creative background has stemmed from my exposure to past motion picture works, many of which are in the public domain. The renewed availability of forgotten films that have passed out of copyright on a yearly basis has been a continuous, creative inspiration to makers of all types of motion pictures. Many of these older filmworks contain cinematic styles, plot devices, acting techniques, uses of lighting, atmospheric settings, and many other elements that can often serve as the inspirational springboard to new, original works.

To shut off their future availability for a 20 year period would most certainly stifle creative efforts on the part of film makers everywhere.

Sincerely,

JOE DANTE
Director

cc: Senator Dennis deConchini, Chairman
Subcommittee on Patents, Copyrights and Trademarks
FAX: 202-224-2302

Rep. William J. Hughes, Chairman
Subcommittee on Intellectual Property and Judicial Administration
FAX: 202 225-3737

Universal Studios • 100 Universal City Plaza • Bungalow 424 • Universal City, CA 91608
Phone: (818) 777-8330 FAX: (818) 733-0103

P.O. Box 752464
Houston, TX 77275-2464
November 25, 1993

Via Facsimile
Ms. Dorothy Schrader, General Counsel
Copyright Office, Library of Congress

Dear Ms. Schrader:

This letter is to voice my opposition to Docket No. RM 93-8. I believe that the copyright extensions proposed would hinder the public's enjoyment of works currently in the public domain and would be the grounds for unnecessary legal battles as reinstatement of copyrights is given to works currently not copywritten. I also believe that the extensions would lead to the unintentional destruction of works held in private collections due to improper storage. As a music lover, I know that recordings made only 25 years ago have deteriorated; older recordings fare less of a chance in private hands. Thank you for taking the time to read my letter.

Sincerely,

James E. Hartman

cc: Senator Dennis DeConcini, Chairman
Subcommittee on Patents, Copyrights, and Trademarks

Representative William J. Hughes, Chairman
Subcommittee on Intellectual Property and Judicial Administration

Mr. David Pierce
Mr. Greg Luce

November 24, 1993

Dorothy Schrader
Copyright Office, Library of Congress
Department 100, Washington, D.C. 20540

Dear Ms. Schrader:

I am writing about Docket No. RM 93-8. This legislation would retroactively expand the copyright period to ninety years. One effect of this would be to bring most silent and old black-and-white films back into copyright. While a handful of these films are still popular, the commercial lives of most of them ended long ago. Their copyright holders have no incentive to put all but a few of these films back into commercial distribution. These companies have huge overheads. They also have more current and profitable films to distribute. The antique films they own are generally unprofitable and will go unseen by the public, except at museum and film convention screenings.

Many of these films are classics, such as "Sunrise" and "All Quiet on the Western Front". As a group they constitute an enormously important national patrimony. Allowing the public to go without seeing them would be a terrible loss to Americans' understanding of their own history and culture

Public domain distribution of these films has worked quite well at keeping these films before the public. The classic "It's a Wonderful Life" did not begin to develop its current popularity until it had fallen into the public domain. And public domain footage, frequently obtained at the National Archives, is a crucial element in the educational films produced by documentary filmmakers.

The seventy-five year copyright period is plenty of time to make profits from such older films as "King Kong" and "The Wizard of Oz". The desire of their owners' to make further profits from these films is less important than the public's access to its own cultural history, its own national treasures.

If this legislation is allowed to pass, the vast majority of films will simply be unavailable to the public. This would be a terrible blow to American education and to our cultural self-knowledge. The public domain performs a crucial role in film distribution. It should be preserved by Congress.

Sincerely,

Christopher B. Clotworthy

Christopher B. Clotworthy

To Dorothy Schrader, Gen Counsel
Copyright Office,
Library of Congress

Brendan Faulkner
Robin B. Faulkner
2 Worden Rd.
Danbury, Ct. 06811
Nov. 24 1993

NO NEED FOR CHANGE

To All It May Concern:

We are Film-makers and Writers, and of course we want our works to be protected, but there comes a time when you must let things go. We strongly feel that the copyright laws as they stand now are fair and equitable, and to extend and / or reactivate defunct copyrights would not serve the greater good. In fact the group that would mainly benefit would be the evergrowing MEDIA CONGLOMERATES. Over the past few years there has been a concerted effort by them to grab up everything in sight.

Our interest in this matter mainly focuses on how these changes would effect film, and TV programs. The public domain in this age of video allows us access to an important part of our film and TV heritage. To put these new laws into effect would put a vast amount of material, eventually, into very few hands, greatly restricting access. More films would be lost, more films would be allowed to fall into poor condition and, more collectors would keep hidden away films for fear of loosing possession of them. The MEDIA GIANTS would soon control the marketplace and deem what is important and what is not; what should be viewed and what should be colorized - PURE CENSORSHIP.

On the whole you would be opening a Pandora's Box. A feeding frenzy would be created. MANY works of all kinds would wind tied up in court for years. Remember the old phrase "If it ain't broke, don't fix it".

Regards

Brendan Faulkner
Robin B. Faulkner

Brendan Faulkner
Robin B. Faulkner

11-25-93 03:26PM

A M I A

Association of Moving Image Archivists

November 25, 1993

Comment Letter

RM 93-8

No. 76

Ms. Dorothy Schrader
General Counsel
Library of Congress, Dept. 100
Madison Building, Room 403
Washington, DC 20540

Dear Ms. Schrader:

Re: Proposal to Extend the Term of Copyright

I am writing on behalf of the Association of Moving Image Archivists to request that the Copyright Office of the Library of Congress extend its November 30 deadline for receipt of comments on a proposal which would add twenty years to the existing term of copyright.

The Association of Moving Image Archivists (AMIA) currently represents over two hundred and thirty archivists at more than one hundred and fifty institutions, in both the public and private sectors. Our members constitute most of the working professionals in the moving image archive field in North America. Any changes in the term of copyright are of vital interest to all moving image archives, their parent companies and institutions, and the public which they serve. Therefore, we are following copyright amendments carefully in both Canada and the United States. Until quite recently, none of our members were aware of the proposal to extend the term of copyright. Certainly the hearings on proposed US copyright amendments held on September 29 were not known to our membership.

The ability of archives to preserve and provide reasonable access to America's moving image heritage could be significantly impacted. The issues involved are simply too complex and the ramifications too far-reaching for the Copyright Office to adopt a position on this proposal without providing an opportunity for concerned parties to study and comment on it. To date, we feel that this opportunity has not been adequately provided. The impression is that this process is being unnecessarily rushed.

In the best tradition of public debate and policy-making, all interested parties should be heard. Therefore, we ask that the deadline for submitting written comments be extended, and that the Copyright Office consider holding a second round of hearings to insure it has received a cross-section of opinions and viewpoints.

Sincerely,

Ernest J. Dick
President
Association of Moving Image Archivists

Canadian Broadcasting Corporation
P.O. Box 8478
Ottawa, Ontario
Canada K1G 3J5

cc: AMIA Executive Board Members

3

NATIONAL WRITERS GROUP®

11537 34th Avenue NE, Seattle, WA 98125-5613

Friday, November 26, 1993

Comment Letter
RM 93-8
No. 77

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

Dear Ms Schrader:

I would like comment on Docket No. RM 93-8 and in particular the proposal to extend "work for hire" copyright privileges from 75 to 95 years.

As an author I certainly believe that those who create a book or movie have every right to protection. But I also believe that that right is not an unlimited one, that after a certain lenght of time work created for the public should belong to the public and pass into the public domain. The present length of protection extended to "work for hire"—75 years—is more than adequate and is already five years greater than that proposed for the European community. There is absolutely no justification for extending it.

Copyrights are intended to encourage creativity by rewarding the actual creators. Allowing the "rights" to extend for 95 years, not only doesn't encourage creativity, it stifles it.. In particular, it will make it difficult for the new, multimedia technologies to use old films and to adapt old novels.

Do not extend copyright privileges an additional 20 years.

Sincerely,

Mike Perry, Editor

(206) 365-1624 Internet: inkling@aol.com

36

Craig T. Wiper
2322 Hooker Oak Ct.
Santa Rosa, CA 95401
26 Nov 93

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100, Washington, DC 20540

RE: Docket No. RM 93-8.

Dear Dorothy:

I oppose the proposal to extend the copyright for works for hire from 75 years to 95 years. I also oppose any attempts to revive the copy-copyrights of films that are already in the public domain. Please take my comments on this subject into consideration.

Sincerely,

Craig T. Wiper

MANIAC PRODUCTIONS, LTD

401 E. 86th St. Ste. 10-H
New York, NY 10028-6416
212-534-8028

11/27/93

Ms. Dorothy Schrader
General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

GENERAL COUNSEL OF COPYRIGHT
NOV 29 1993
RECEIVED

Comment Letter
RM 93-8
No. 79

Dear Ms. Schrader:

It has been brought to our attention that a bill is in the works to extend the copyright on works-for-hire from the current 75 to 95 years. The number for this proposed bill is Docket #RM 93-8.

Simply put, this must not be allowed to happen.

Such a bill would virtually eliminate the freedom of Public Domain access to thousand of motion pictures. Please remember the key word in the phrase "Public Domain" is "public" and it's the public who benefits from exposure to all sorts of motion pictures. It's public opinion after all that turns a movie into a classic. This new bill will force many established classic and yet undiscovered classics-to-be back into studio vaults where they will languish awaiting the whim of some studio executive to release them to television, cable, revival houses, or videocassette. This will condemn thousands of films which should be out there to be seen an appreciated by generations of film lovers to the worst of all possible fates: anonymity

I cannot strongly enough express my feelings against this proposal. Please do not let the proposal, Docket #RM 93-8 pass. Please do not let so many treasured movies, a huge chunk of our American cultural heritage, be condemned to a slow disintegrating death in a studio vault due to owner apathy. We all urge you to oppose this proposal and do not let it pass. Keep our motion picture history out there in the public where it belongs.

Thank you.

Yours very truly,

Thomas E Richardson

Thomas E Richardson, Esq.
CEO, Maniac Productions

TER/td
ccs: Dennis DeConcini
William J. Hughes
Greg Luce
David Pierce

All Maniac Productions cards and stationery are printed on recycled paper.

December 28, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100, Washington, D. C. 20540

Dear Ms. Schrader:

Reference: Docket NO. RM 93-8

I oppose the proposal to extend the copyright for works for hire from 75 years to 95 years. Some of my reasons are stated below.

1. This is contrary to the purpose of copyright outlined in the United States Constitution.
2. It benefits a handful of large companies, with no public benefit.
3. These are the same companies that allowed so much of our film heritage to be nearly lost in the first place, then donated the survivors to film archives.
4. Archives have preserved the studio-owned titles with Federal funds, yet the films are still unavailable.
5. These films are of great Educational and Historical importance.
6. U.S. copyright extension is not compatible with the European proposal.
7. Public domain is used to create new works, such as documentaries and educational films.

I oppose any attempts to revive the copyrights of films that are already in the public domain.

Please think this over before you vote for this docket because if you do it will effect only the elite and not America's lovers of film and scholars of film history.

Sincerely,

Eddie Bishop

Eddie Bishop
673 Sumrow Street
Halls, Tennessee 38040
Tel. 901-836-9487

3-

Sharon Marshall
Archivist
P.O. Box 1413
Guthrie, OK 73044
(405) 945-2997
November 28, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

Re: Docket No. RM 93-8

Dear Ms. Schrader:

Please note that I am opposed to extending the copyright for works for hire from 75 years to 95 years. Further, I oppose any attempts to revive the copyrights of films that are already in the public domain.

The key issue to consider is that ownership does not necessarily involve stewardship. As an archivist, I have seen that many films are destroyed due to neglect and lack of preservation funds. In fact, a film that is copyright protected but not considered able to generate blockbuster-type profits is less likely to be preserved, let alone distributed, than a public domain film. Until copyright owners as a group are prepared to take a culturally responsible role towards their creations, whether or not they are determined to be "monster hits," Docket RM 93-8 will unfortunately facilitate faster destruction and less availability of films of cultural significance to the American public.

To repeat: films in the public domain are more apt to be preserved and viewed than most copyright protected works.

Thank you for considering my statement.

Sincerely yours,

Sharon Marshall

Sharon Marshall
Archivist

Carnegie Mellon

Laboratory for Computational Linguistics
Department of Philosophy
Carnegie Mellon University
Pittsburgh, Pennsylvania 15213-3890
U.S.A.
Telephone: +1-412-268-5085
Fax: +1-412-268-1440

40

GENERAL COUNSEL
OF COPYRIGHT
NOV 29
RECEIVED

Comment Letter
RM 93-8
No. 82

FAX Message

Date/Time: 2:00 PM 26 NOV 93

To: DOROTHY SCHRADER, GENERAL COUNSE

At: COPYRIGHT OFFICE, LIBRARY OF CONGRESS

Fax: 202 707 8366

From: STEVEN HANDERSON

Subject: I OPPOSE COPYRIGHT EXTENSIONS AND DENOUNCE CLAIMS TO PUBLIC DOMAIN PROPER

Pages: 3 ~~[illegible]~~ AFTER THIS

41

Steven Handerson
3955 Bigelow Blvd. #402
Pittsburgh, PA 15213

November 26, 1993

Dorothy Schrader, General Counsel
Copyright Office
Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader:

I am writing concerning Docket No. 93-8, proposing to extend the term of copyright protection. I am against any and all such extensions. I especially oppose any and all attempts to re-copyright works already in the public domain.

One supposed rationale – to become "in sync" with the EC – is nonsense, as the terms mentioned are only proposed, and in the case of films we already surpass the only recently proposed 70-year EC term.

It is frightening, yet sadly understandable, that some people would like to limit or eliminate the public's claim to creative works now that powerful technologies exist to more permanently and effectively preserve, distribute, and use such works. Why should this technology only benefit the fortunate, who have already had 75 years of use and profit? Indeed, it goes against the whole purpose of copyright protection, which protects the idea, and not the form or expression, and is to protect and encourage the creation of new works, not the profit from old.

42

This reflects an effort on the part of a few fortunate individuals or corporations to protect their rights to profit from works in which they most assuredly had NO PART in creating. This is a perversion of the intent of the copyright law, which was intended to encourage the production of creative works by assuring authors that they benefit from their labors, as stated in the Constitution. I find the attempts to re-copyright works already in the public domain a perversion of law itself and without merit; as a part-owner of all such current and heretofore promised (to-be-released) property, I denounce all such claims to my property.

Many documentaries and educational films have already been produced using public domain materials. Archives of studio-owned titles have been preserved with Federal funds, and the public deserves something in return. Copyright protection itself is a service of the Federal government, and the public deserves eventual access in return. In return for more copyright protection, the major copyright holders promise nothing.

There is a flip side to this issue, though, which is how to protect the efforts of people and corporations to preserve creative works which otherwise might be lost. One way might be to copyright the restoration, colorization, digitization, etc. separately from the original, but still allow the restoration of other copies. However, we must make a distinction between the work and the realization of the work. Otherwise copyright should be eternal, which is something I find untenable, and only beneficial to media conglomerates, not authors, and not the public.

43

In fact, it seems that argumentation on this issue so far has masked the fact that directly OPPOSITE action might be necessary in order to preserve historical films etc., and the survival of films etc. which are not deemed profitable enough for restoration by the current "owners" (those with access to the physical media). Already under the current terms and protection many films from the silent era have been lost due to neglect. One might argue that physical manifestations of uncopyrighted works in danger of being lost forever should be made accessible anyone, even corporate competitors, who are willing to finance restoration; or even confiscated if maintaining them is not a burden to the National Archives. I only say this to add strength to the argument against strengthening copyright protection, although is this not what public ownership would imply?

I find it incredible that, now that life spans are perhaps double what they once were, that any term beyond life is already against the spirit of the copyright law, and social and technological change is increasing at an arguably exponential rate, that anyone with a clear conscience, certainly anyone who does not directly benefit from such a change, could argue for INCREASING the duration of copyright protection.

Sincerely,

Steven Henderson

Steven Handerson

TELEFAX vom/from:

Zantrum für Graphische Datenverarbeitung e.V.
Wilhelminenstraße 7
D64283 Darmstadt

Telefax: +49 (6151) 155 480
Telex: 4197367 agd

An/To: Dorothy Schrader, General Council	Von/From: Michael A. Sokolewicz
Firma/Company: Copyright Office, Lib. of Congress	Telefon-Nr.: +49 (6151) 155 243
Ort/City: Washington DC	Datum/Date: 29 Nov 1993
Telefon-Nr.:	
Telefax-Nr.: 202-707-8366	Seitenzahl/No. of Pages: 1
Betr./Subject: Docket No. RM 93-8	

Dear Ms. Schrader,

I am a U.S. citizen living abroad. I am also very involved in the Gutenberg Project, which make public domain written works available to people through electronic communications medium. it one of the very few ways through which I have access to classics in literature. In this capacit I wish to register my strongest possible objection to the proposed extension of the copyright law in **Docket No. RM 93-8.** It would cause great hardship for the project, as well as retroactivel making it illegal for me to keep many of the great works I have. Further, I believe it only furthe the interests of a few wealthy organizations, and not that of the American people in general.

Please take into consideration what these extensions would do to such non-profit projects an people with limited access to English-language material during discussion of this proposal.

Thank you.

Sincerely,

Michael A. Sokolewicz

GENERAL COUNSEL OF COPYRIGHT
NOV 29 1993
RECEIVED

Comment Letter
RM 93-8
No. 83

Dear Ms. Schrader,
I'm writing to tell you t
I'm completely opposed to yo
proposal that Congress extend
the copyright term for motio
pictures to 95 years. This woul
all but destroy enjoyment and
search of classic cinema by ma
ing most of the films unavail
to the general public.
Please, I beg you, don't go
through with this!!
Sincerely,
Roger Hurs

Image Works Incorporated

1124 S. Solano · Las Cruces · New Mexico 88001
Ph. 505-525-8233

November 29, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, D.C. 20540

Re: Docket #RM 93-8

Dear Ms. Schrader,

I am writing to express my outrage at the proposal to extend copyright terms from 75 to 95 years and the lopsided weight of testimony presented at the hearing on September 29th, 1993. Clearly the current term of 75 years is ample to protect the interests of creative artists for their natural lifetimes and the best interests of the public.

The proposal advanced by representatives of the music industry at this hearing is self serving and wrong for America. The assertion made by George David Weiss of the Song Writer's Guild of America that "And when a copyright enters the public domain, there are no gainers; only losers." is patently unsupportable. It is demonstrable that consumers benefit by millions of dollars every year from lower costs and greater access to public domain books, sheet music and videos.

This concept of public domain is not only good for consumers and the marketplace but it is also an integral part of our cultural ideal and heritage. That is, when a sufficient period of personal gain for the artist has ended, the art becomes the property of the public to educate and endure as part of our history for the benefit of all.

I am also appalled at the testimony of David Nimmer which advances the idea of restoring copyright protection already lost to some foreign works for the sake of "harmonization". I would suggest that this whole idea opens a Pandora's box of thorny issues which are best left alone.

I suggest that the committee examine a broader base of opinion from librarians, scholars, academics, publishers and artists before reaching hasty conclusions based upon the testimony presented by the industries represented at the hearing on September 29th.

The copyright term as established under current law is fine.

Yours truly,

Steven Newmark

Steven Newmark
President

Holler Observatory
Tom R. Rice
Star Route Box 34 Mines Road
Livermore, CA 94550
408-897-3157
CIS: 71160,1122
tomrice@netcom.com

November 29, 1933

Dorothy Schrader, General Counsel
Copyright Office
Library of Congress, Department 100
Washington DC 20540

Re: Docket No. RM 93-8
Copyright Extension, etc.

Dear Ms. Schrader:

It has been recently brought to my attention that there is a move afoot to extend copyright protection for works for hire for an additional twenty years, and possibly to revive copyright protection for properties currently in the public domain.

As a writer and film producer, I feel that the existing copyright provisions provide sufficient protection, especially when we consider the balancing argument of the greater needs of society. Many motion pictures of technical and historical significance have been allowed to rot away in forgotten vaults because there was no incentive for their owners to release them.

My particular field, the production of educational films on science, would suffer serious financial setbacks if we were denied access to images and music which currently are in the public domain. Funding for science films and documentaries is extremely tight, and many would not be made at all if their producers were forced to negotiate clearances for existing properties or, the alternative, to pay for the production of new material for incorporation in their work.

Kindly register my intense opposition to this and similar proposals.

Sincerely, trr

48

Comment Letter
RM 93 - 8
No. 27

November 29, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100, Washington, D. C. 20540

Dear Ms. Schrader:

As a private citizen and video collector, I strongly oppose the copyright extension on films that is presently being considered under Docket No. RM 93-8.

Sincerely,

Stanley Krause

Stanley J. Krause
18766 Los Alimos St.
Northridge, CA 91326

49

DOUGLAS G. REYNOLDS
ATTORNEY AT LAW
208 MAIN STREET
PENN YAN, NEW YORK 14527

(315) 536-3833

GENERAL COUNSEL
OF COPYRIGHT

NOV 29 1993

RECEIVED

Comment Letter

RM 93-8

No. 88

FACSIMILE TRANSMITTAL SHEET

Date: November 29, 1993

From: Douglas G. Reynolds (phone 315-536-0732 or 536-3833)

To: Ms. Dorothy Schrader, General Counsel, Copyright Office, Library of Congress, Dept. 100, Washington, DC 20540

FAX No.: 202-707-8366

Telephone No.:

No. of pages to follow: 2

FAX Operator Telephone No.: 315-536-5183 (Yates County Department of Social Services)

Message:

50

November 29, 1993

Ms. Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540
FAX 202-707-8366

RE: Docket No. RM 93-8 (Proposed copyright extensions)

Dear Ms. Schrader:

I am writing to you concerning what I understand to be proposals to extend the term of copyright protection for works for hire from 75 years to 95 years and to further make this time period retroactive so as to bring under copyright protection works that have long been in the public domain. My concern is particularly addressed to old movies, and I strongly oppose the extensions. While my objections are somewhat selfish - I simply and plainly love old movies, particularly silents - I believe they are nonetheless valid.

While videotaping and the sale of videotapes has changed the situation somewhat, the distribution of movies has traditionally been different from the distribution of other copyrighted works such as books, magazines and music. Movies have been rented while most other copyrighted works have been sold, making movies generally unavailable after initial release. If I want to read an old book or an old magazine, or listen to music recorded many years ago, I may turn to bookstores, libraries, archives or old recordings; availability is generally guaranteed by the fact these works were distributed by sale. If I want to watch an old movie, it will not be available unless it has fallen into the public domain or has been re-released by it's copyright holder, often a major Hollywood studio.

The neglect of old movies by the studios and their copyright holders, the continued deterioration of prints, and the limited appeal of many old movies, particularly silent movies, when coupled with the proposed copyright extension and retroactivity, practically guarantee that many old films will never be available to the public. The studios and other copyright holders have, and will have, little incentive to release early movies on video as the money is to be made by releasing newer movies sought by a much larger public.

I understand the necessity of reasonable copyright protection for all creative works, including movies, but I believe that that protection must be given in light of, and with regard to, the public benefit of making works available. The copyright laws

51

should afford protection while making the created work available; in the case of movies, an extension beyond 75 years, together with retroactivity, affords the protection but not the availability.

I strongly urge your office to reject the current extension proposals and allow me, and others, to continue to enjoy old movies.

Very truly yours,

Douglas G. Reynolds

Douglas G. Reynolds
208 Main Street
Penn Yan, NY 14527

DGR/sr
xc: Senator Dennis DeConcini
Representative William J. Hughes
Senator Daniel P. Moynihan
Senator Alfonse M. D'Amato
Representative Amory Houghton, Jr.
David Pierce
Greg Luce
Classic Images

52

Comment Letter
RM 93-8
No. 89

GENERAL COUNSEL OF COPYRIGHT
NOV 29 1993
RECEIVED

November 29, 1993

Dorothy Schrader
General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader:

This letter is in reference to DOCKET NO. RM 93-8. I would like to make it quite known that I am opposed to any attempt to revive the copyrights for works for hire from 75 years to 95 years.

The proposal is based on "greed" and has nothing to do with protecting our film hertage. The owners of the copyright, who don't care about their works, only for making money, will be protected and the general public will never get access to films and works as it currently exists under public domain policy.

I am a collector of classic and obscure films and also work in advertising where we use public domain footage in some commercials. I don't appreciate what this bill will do to my personal and professional interests. Please consider defeat of this bill. Where is the public benefit? We will never be able to see the works in public domain again!!!!

Sincerely,

Ronald R. Kirkman

RONALD R. KIRKMAN
33745 Clearview Drive
Fraser, MI 48026-5086

CC: Senator Dennis DeConcini; Chairman; Subcommittee on Patents, Copyrights and Trademarks
CC: Representative William J. Hughes; Chairman; Subcommittee on Intellectual Property and Judicial Administration
CC: Senator Carl Levin; United States Senate
CC: Representative David Bonior; United States House of Representatives
CC: Greg Luce; Medford, OR
CC: David Pierce; Laurel, MD

HEWLETT PACKARD

Hewlett Packard Company
Boise Site Operations
11311 Chinden Blvd.
Boise, ID 83714-1021
USA

Tel: (208) 396-6000
Fax: (208) 396-7633

53

Fax Transmission

To
Dorothy Schrader, Gen. Counsel

From
Christopher Scott Edler

Fax Number
9 1 202-707-8366

Barcode Address

GENERAL COUNSEL
OF COPYRIGHT
NOV 29 1993
RECEIVED

Comment Letter
RM 93-8
No. 90

Message

I would like to state my opposition to the proposal to extend the copyright for works for hire from 75 years to 95 years. This is in reference to Docket No. RM 93-8.

I also oppose any attempts to revive the copyrights of films that are already in the public domain.

Regards,
Chris Edler

54

29 November 1993

Gerald W. Edgar
351 Bronson WY NE
Renton, WA 98056

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100,
Washington, DC 20540

Dear Ms Schrader:

I write to you to say I am against changes to the copyright law to extend the copyright of film and music for an additional 20 years. I am also against putting under copyright works that are currently in the public domain. These changes do not serve my interests of having film and music available to use at reasonable cost. This change does benefit a few large companies. The change would also be at odds with the term of copyright in other countries. I am against the proposed changes. We have a heritage of this country that can be easily seen and heard in film and sound. In extending the copyright of film and sound that will be less readily available and it will cost more. For the sake of the present and future, to see and hear the range of this country, I do not want to see the copyright extended

Yours Truly,

Gerald W. Edgar

Page 1 of 1 page
No return FAX available

55

FAX COVER SHEET

GENERAL COUNSEL
OF COPYRIGHT

NOV 29 1993

RECEIVED

Comment Letter

RM 93-8

No. 92

School of Dentistry
Offices of the Dean
DEAN
DEVELOPMENT
PERSONNEL
University Park, DEN 203
Los Angeles, California 90089-0641

Dean's Office Phone: (213)740-2811 FAX: (213)740-3807
Dental Development Phone: (213)740-0428
Personnel Phone: (213)740-0435

Date: November 29, 1993 Time Sent: 3:00 P.M.

TOTAL NO. OF PAGES SENT (including this cover page): 3

If you do not receive the total number of pages listed above, or if any pages are not properly transmitted, please call back as soon as possible.

TO: Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100, Washington, DC 20540

NAME:

FAX NUMBER: 202-707-8366

FROM:

NAME: Stephen G. Pake, Los Angeles, CA

MESSAGE (if any):

56

November 29, 1993

Stephen G. Pake
301 S. St. Andrews #208
Los Angeles, CA 90020
(213)487-1128

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress, Department 100
Washington, DC 20540
FAX (202)707-8366

Dear Ms. Schrader

I am writing this in reference to Docket No. RM 93-8, which concerns the extension of copyright terms. I am extremely opposed to such an extension, particularly in the area of "works for hire," which includes motion pictures.

The current law allows copyright for 75 years - this is plenty of time. What is the point of increasing it to 95 years? Don't bother presenting the argument about getting into synch with Europe. The proposed European copyright term is only 70 years. If the U.S. is really concerned with getting into synch, we would be decreasing our copyright term.

I have no intention of denying filmmakers the right to earn a profit on their works. Much is invested in the production of a motion picture, and any financial benefits derived therefrom are well deserved. However, once a film loses its profit-making ability, film distributors lose their interest in the film. It takes a lot less than 75 years for a film to wear out its earning ability. So why extend the copyright term to 95 years? 95 years is nearly as long as the life of the cinema!

The problem with this proposal will not be immediately recognizable to the average citizen, but it is glaring to a film historian. You are probably aware that most American films have already been lost. They are gone for good. These include not only obscure gems and early works by artisans who later rose to fame, but even major studio releases with major stars, writers, producers and directors. The problem is that the film industry has little or no interest in preservation of their works.

The studios deny their disinterest, of course. Every "concerned" film executive will say his company is taking steps to improve film preservation, but don't you believe it. I don't judge people by what they say. I judge them by what they do... and the major studios are doing nothing. They don't care.

57

Who does care? The film fans, the audience, the general public... they care. In particular, a handful of dedicated enthusiasts have been scouring the archives and film vaults to rescue old films from the verge of extinction. These are the distributors of public-domain videos.

So is that what this is about? Making money? Well, yes and no. Film preservationists do need income. Their work can be costly and bills don't pay themselves. But greed isn't the motivator. Nobody gets rich selling public-domain videos.

The motivator is love for the cinema. Since the era of video began, large numbers of films have been rescued from obscurity. Some of these films were even believed to be lost. This has been accomplished through a lot of dedication and hard work. It would be impossible if the preservationists were not able to market their finds. Video distributors aren't the only ones who benefit, the public does too. The public can now view films (quite inexpensively) that would otherwise be gathering dust on a shelf... or be disposed of.

Most people are aware that early films were shot on nitrate film stock which, over time, deteriorates into a dangerously combustible substance. These films must be transferred to another medium before it is too late. The original copyright owners usually have no interest in doing this, or even knowledge of the necessity. Extending the copyright term by another 20 years will probably allow the clock to run out on the last of the nitrate films.

More recently, film studios have allowed their color negatives to fade beyond repair. How long can we permit this uncaring attitude to prevail before we turn the tide?

No medium represents the American experience better than the cinema. Motion pictures were created through the synthesis of technology and creativity which only occurs in the United States. Motion pictures are a major part of the American heritage. The rest of the world knows us through our movies. A portion of our heritage is slipping away, and we can't afford to lose it.

The proposed copyright term extension threatens this heritage. Please see that it is not enacted. Think of the public. Serve the public. Please!

Sincerely,

Stephen S. Pake

Stephen G. Pake

cc: Senator Dennis DeConcini
Rep. William J. Hughes

58

Post-it™ brand fax transmittal memo 7671	# of pages ▸ 2
To D. Schrader	From S. Lloyd
Co. Library of Congress	Co.
Dept. 100 - Copyright Ofc.	Phone # (312) 728-8007
Fax # (202) 707-8366	Fax # (312) 466-2930

3023 N. Clark St. #174
Chicago, IL 60657
November 29, 1993

Dorothy Schrader
General Counsel
Copyright Office
Library of Congress Dept. 100
Washington, DC 20540

Ms. Schrader:

This letter is written to oppose Docket No. RM 93-8, the proposal to extend the term of automatic copyright protection beyond the current life-of-the-author-plus-50-years duration.

I am not a video distributor, and I do not stand to profit financially from limits on copyright protection; but I am an interested lover of motion pictures. Many wonderful movies throughout history have suffered commercial failure because their producers or studios lacked the imagination required to market those films successfully to their true, intended audience. If they are written off by their owner(s) as financial flops, traditionally these movies will languish into obscurity with little or no distribution -- especially if they have no high-profile names associated with them or were not particularly expensive to make.

In thousands of cases, such abandoned movies earn no income for their backers, their creators, or for the heirs of either, simply because they don't get distributed. In this citizen's opinion, extending the copyright-protection term to 95 years would condemn many undiscovered treasures to perpetual oblivion in exchange for protecting the rights of conglomerates to profit, for years more, off the same material by which they already have been profiting for a fair-enough period.

If the legislative bodies really would like to act in behalf of authors and profit participants, why don't they pursue a legislative course to end the tricky accounting practices which permit so many copyright holders to avoid paying a fairer share of profits during the "life of the author(s)"? More offbeat, original films might be made if it weren't so easy to claim that most of the few which do get produced don't perform so well.

Sincerely,

Steven Lloyd

Steven Lloyd

GENERAL COUNSEL
OF COPYRIGHT

NOV 30 1993

RECEIVED

Comment Letter

RM 93-8

No. 94

60

November 21, 1993

Ms. Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader:

I am writing concerning the proposed 20-year extension of copyright for works for hire, Docket No. RM 93-8. I am opposed to any extension of the existing copyright law and I also opposed to any attempt to revive the copyrights of films that are already in the public domain. This proposal should not be submitted to Congress for the following reasons:

- U. S. copyright extension is not compatible with the European proposal.

- It is contrary to the purpose of copyright outlined in the United States constitution.

- It benefits a handful of large companies with no public benefit. These are the same companies that allowed so much of our film heritage to be nearly lost in the first place and then donated the surviving footage to film archives, which have preserved the studio-owned titles with Federal funds, yet the films are sill unavailable.

- These films are of great educational and historical importance.

- Public domain is used to create new works such as documentaries and educational films.

Sincerely,

Richard Johnsonbaugh

Richard Johnsonbaugh
2951 Chayes Park Drive
Homewood, IL 60430

cc: Senator Dennis DeConcini
Representative William J. Hughes
Senator Paul Simon
Senator Carol Mosely-Braun
Representative Mel Reynolds

137 Seventh Ave.
Sea Cliff NY 11579

November 22, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington DC 20510

Dear Ms Schrader,

RE: Docket No. RM 93-8

I'm writing to oppose the proposal to extend the copyright for motion pictures, from 75 years as it now stands, to 95 years.

The extension might benefit a few copyright holders financially, but it would do the viewing public a terrible disservice, by withholding from view, many important films of the early days. 75 years seems quite a long enough time to grant copyright protection to motion pictures.

For the same reason I'm opposed to any attempt to revive the copyrights of films that are already in the public domain.

Sincerely,

Halbert F. Speer

Halbert F. Speer

David Pierce

P.O. Box 2748, Laurel, MD 20709 tel- 301 490-2364 fax- 301 604-6827

62

November 29, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

REF: Docket No. RM 93-8

Dear Ms. Schrader:

I am a member of The Committee For Film Preservation and Public Access, and support the Committee Comments. I have read the submissions of the music interests and the transcript of the September 29 hearing, and have given substantial thought to the issues under consideration here.

There are three discrete issues before the Copyright Office. These are proposals to:

1. Extend the current copyrights for works by individuals by another 20 years.
2. Extend the current copyrights for "works made for hire" by another 20 years.
3. Resurrect the copyrights in all public domain material that would be covered by these terms.

As noted in my letter of September 28, only the first issue was contained in the Copyright Office notice. That announcement contained no mention of the second and third proposals. The Copyright Office should take advantage of the fact that these proposals are not officially under discussion and proceed with consideration of the first proposal. The second and third proposals require significant additional study and analysis, and there is no point to delaying consideration of the first proposal.

I oppose all three proposals, as I see no justification for copyright extension. The argument for a balance between copyright and public domain is made quite effectively by the comments of the Copyright Law Professors. In my readings and research, I discovered two principles which I support:

1. The copyright law should promote the interests of living authors, actively engaged in the creation of new works (who rely on the public domain), over the interests of the heirs of no longer living authors who have long since been compensated for their work.
2. The goal of copyright is to promote authorship, not authors. There will be greater and more diverse authorship with an expanded public domain. Copyright efforts should focus on encouraging creativity, not compensating creators.

In the unfortunate event that the Copyright Office does choose to recommend the first proposal, there are four points I wish to make.

1. When examining the effect of the proposed change on <u>pre-1978</u> works by individuals, it is quite evident that a European Community term of protection of "life plus 70" is not the same as a U.S. term of 95 years. They just don't match. Certainly, adding 20 years to the term of American works brings the terms of protection closer, but the terms are still not synchronous. If the goal is to match Europe, then why didn't the music interests ask that

the current 75 years for works by individuals for pre-1978 works be changed to life plus 70? Otherwise you are not matching Europe, and the EC has yet another reason to deny American authors equal protection.

2. The music interests included improvement to the U.S. balance of trade as a justification for term extension. However, many of the copyright holders who would benefit from this are foreign owned. It is true that the revenue will come to the United States affiliates of these companies, but that will just be a short stop before it continues on to the parent company in Japan, France, Australia or The Netherlands. For works with foreign owners, royalties received from domestic users will cause a negative impact to the balance of trade, while foreign royalties will have no net impact.

3. The music interests discussed the advantages of gaining equal copyright protection for American authors if U.S. terms match Europe. It seems likely that the EC will always find a way to disadvantage American authors, just as U.S. copyright law has been historically biased against foreign authors.

4. It is hypocritical to request term extension as a benefit for authors, while not also allowing for a strong termination provision. It is widely known that many songs were sold outright, and in other cases publishing rights were signed away, so that the original authors or their estates currently receives little or nothing for their effort.

Thank you for your consideration. I look forward to being kept informed of the progress of the Copyright Office study on term extension.

Yours sincerely,

David Pierce

The Committee For Film Preservation and Public Access
P.O. Box 2748, Laurel, MD 20709 tel- 301 490-2364 fax- 301 604-6827

64

November 29, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

REF: Docket No. RM 93-8

Dear Ms. Schrader:

The Committee For Film Preservation and Public Access is pleased to participate in the debate over duration of term for copyrights.

I am attaching ten copies of our comments, titled "Who Will Set the Tolls on the Information Superhighway?" and ten copies of our supporting research report "The Economics of Term Extension for Motion Pictures."

In addition, because of the complexity of these issues as the affect motion pictures, I am attaching a single copy of our submission to the National Film Preservation Board of the Library of Congress, dated February 12, 1993. This statement, titled "Preservation Without Access is Pointless," discusses the wealth of motion picture material, preserved with Federal Funds, which is unavailable to the public, due to donor and copyright restrictions.

We look forward to being informed of the progress of your report, and will be pleased to provide further information on request.

Yours sincerely,

David Pierce

enc: "Who Will Set the Tolls on the Information Superhighway?" (10 copies)
"The Economics of Term Extension for Motion Pictures" (10 copies)
"Preservation Without Access is Pointless" (1 copy)

65

Who Will Set the Tolls on the Information Superhighway?

Comments of

The Committee for Film Preservation and Public Access

to the Copyright Office Notice of Inquiry on

Duration of Copyright Term of Protection

November 29, 1993

DOCKET NO. RM 93-8

TABLE OF CONTENTS

I. Introduction 1

II. There is No Justification for Extending the Current 75-Year Copyright Term for "Works Made for Hire" 5

A. The Arguments Supporting Extension of the Term of Protection for Works by Individuals Do Not Apply to Works Made for Hire 5

B. Term Extension Will Increase the Prices Charged for Copyrighted Works 8

C. The Constitution Encourages a Vigorous Public Domain 9

D. The Public Domain Benefits The Public 11

E. Copyright Owners Are Themselves Extensive Users of Public Domain Material 14

F. "Owners" of Public Domain Works Continue to Distribute Them and the Public Benefits 15

G. Copyright Control Often Reduces the Availability of Copyrighted Works 16

H. Public Access, Not Term Extension, Is the Real Issue With Motion Pictures 18

I. Term Extension Would Destroy Incentives for Film Preservation 19

III. Any Attempt to Resurrect the Copyrights in Public Domain Works Would be Unconstitutional, Undesirable and Impractical 20

IV. Conclusion 24

This statement is submitted on behalf of The Committee For Film Preservation and Public Access in opposition to proposals to extend the U.S. copyright term for "works made for hire" from the current 75 years to 95 years, and to resurrect the copyrights in works that have already fallen into the public domain.

The proposal to extend the copyright term for works made for hire is a bad idea and bad public policy. It will benefit a very small number of companies, while providing no identifiable benefit to the public. In addition, extension will greatly restrict the availability and usage of existing creative works, while discouraging and limiting the creation of new works.

The proposal to resurrect the copyrights in works presently in the public domain is an even worse concept. Like copyright extension, resurrection is counter to the Constitution and the consistent position of the Supreme Court. In addition, regardless of how it is implemented, copyright resurrection would cause innumerable unforeseen consequences.

I. Introduction

The Committee For Film Preservation and Public Access is a group of motion picture screenwriters, directors, producers, distributors, historians and journalists who are vitally concerned about copyright, preservation and access issues that affect the availability of motion pictures to the American public. The Committee was an active participant in the debate that preceded enactment of the "Automatic Renewal Law." In addition, the Committee is actively participating in studies by the Library of Congress concerning issues of film preservation and public access. A list of the Committee's members is attached.[1]

The Committee for Film Preservation and Public Access is concerned about motion pictures, or "works made for hire." Therefore, we express no position on the advisability of extending the

---

1 See Appendix. Because the Committee is an informal group, its membership may vary from time to time.

For the sake of simplicity, the comments in this statement focus primarily on feature-length motion pictures originally made for theatrical release. However, the Committee is equally concerned about other types of motion pictures, including television programs, documentaries, short subjects, cartoons, newsreels, educational films, etc. These will also be adversely affected by the proposals under consideration in this proceeding.

copyright term of protection on works copyrighted in the names of individuals.[2] However, works made for hire are fundamentally different than works by individuals. Since these works already exist, the indication of public benefit is availability: Will term extension for works made for hire increase the availability of creative works? All other considerations are secondary. We address this question in this statement.

Four brief, preliminary comments are appropriate here:

Burden of Proof. In 1989, the Copyright Office concluded those who propose changes in the Copyright Act bear the burden of proving that a "meritorious public purpose" would be served by such changes. The Motion Picture Association of America agreed with this conclusion.[3] So does The Committee for Film Preservation and Public Access. This test has yet to be satisfied for *any* of the current proposed changes to the copyright law.

The proposals under consideration would mandate that absolutely no additional creative material would be added to the public domain for twenty years. The next two decades promise great challenge and enormous change for our country, yet the proponents of term extension wish to freeze the creative status quo for almost a generation. Newton Minow's "vast wasteland" of thirty years ago will seem like an oasis compared to the cultural drought that would result from copyright extension. To even propose such a radical idea should require a compelling argument. Yet, the proponents of change presented only anecdotal evidence of benefit to authors. And, they could provide absolutely no evidence that this would benefit the public.

How Long a Term? Despite the Constitutional mandate that copyrights be confined to "limited times," perpetuity is obviously the ultimate goal of the proponents of term extension. The 1976 Copyright Act added 19 years to the 56-year copyright term. Fifteen years after that law took effect, the special interests are now asking for another 20 years. If these proposals are implemented, in another fifteen years we can expect to see these same parties petitioning for still another extension. The MPAA has already indicated that it would favor an extension of 50 years,

---

2 Of course, some members of the Committee may wish to do so on an individual basis.

3 Theresa McMasters, "U.S. Copyright Office Throws Weight Behind Artists' Rights," *The Hollywood Reporter*, March 16, 1989, p. 1.

for a total term of 125 years.[4] The Songwriters Guild of America goes even further, and supports giving "perpetual life to copyrights."[5]

Clearly the time has come for all parties to state the obvious: Enough is enough!

A Question of Process. The announcement on this issue in the *Federal Register* discussed bringing U.S. copyright terms in line with those proposed for the European Community.[6] Since the U.S. term of protection for works made for hire is already longer than that proposed for such works in the EC, the announcement discussed only works by individuals. However, in their submissions and testimony, the copyright interests went far beyond the Copyright Office notice to call for extending the copyrights on works made for hire and resurrecting the copyrights of public domain works. The Committee For Film Preservation and Public Access believes— and notes for the record— that these additional, non-noticed issues are not properly before the Copyright Office.

Therefore, any Copyright Office report should recognize that a full investigation of the effect of term extension on works made for hire and copyright resurrection has yet to be performed. At a minimum, if the Copyright Office is going to consider these additional issues, another public hearing must be held so that all interested parties may present their views *before* the Librarian of Congress makes any recommendations to Congress. In addition, this statement and other statements being filed concurrently will raise questions that can most expeditiously and productively be addressed at a public hearing. Nevertheless, since term extension for works made for hire and copyright resurrection were raised by the proponents of an open-ended copyright term, we consider their catastrophic effect in this statement.

Distortion of 1976 Act. The Committee is greatly concerned at the process by which the entire fabric of the Copyright Act of 1976 is being unwoven. Wholly apart from the specific issues

---

4 Transcript of September 29 Hearing, Testimony of Bernard Sorkin, speaking for the Motion Picture Association of America, p. 71.

5 Comment Letter No. 6 in this proceeding, p. 4.

6 "Notice of Public Hearing and Notice of Inquiry: Duration of Copyright Term of Protection," *Federal Register*, Vol. 58, No. 145, July 30, 1993, pp. 40838-40840.

involved in this proceeding, we are disturbed by the process evident in recent years under which major policy issues are being addressed and changes are being made on a patchwork basis.

Two examples suffice: the Automatic Renewal Law (Public Law 102-307) will keep thousands of works from falling into the public domain and condemn many motion pictures to oblivion.[7] The current legislation to remove the incentives for registration will have a severe impact on the national collections of the Library of Congress and on use of abandoned works. With this latest inquiry, the Copyright Office is considering a panoply of changes, all extremely controversial, and all affecting the availability of creative works to the public.

There are times when quiet, informal inquiries may be appropriate: procedures to address new technologies, or administrative changes to clarify ambiguities. However, the proposed modifications under consideration in this proceeding are as significant as any in the 1976 Act, yet the debate is taking place in the shadows with only minimal public participation or discussion.

This process raises serious questions about how United States copyright policy is developed. The Copyright Act of 1976 was enacted as a unified whole after 15 years of open debate in which all interested parties had a full opportunity to express their views. The Committee is not opposed to change. But we are opposed to a process that considers and produces changes in isolation and without any evaluation of their impact on the 1976 Act. More such changes are clearly at issue in this proceeding, and the Copyright Office should not consider them without also considering their "radiating consequences"[8] on the overall scheme of the 1976 Act.

As the U.S. enters the next millennium will we have a consistent, defensible copyright law that balances competing interests? Or, instead, will the U.S. copyright law be a patchwork quilt constructed a piece at a time by special interests to benefit their constituencies? And throughout the process, who represents the interests of the American public?

---

7 See: Gregory Luce, "Protected to Death," *Film Comment*, November-December 1991, pp. 73-74.

8 Alexander M. Bickel, *The Least Dangerous Branch* (Indianapolis and New York: The Bobbs-Merrill Company, Inc., 1962), p. 140.

II. There is No Justification for Extending the Current 75-Year Copyright Term for "Works Made for Hire"

A. The Arguments Supporting Extension of the Term of Protection for Works by Individuals Do Not Apply to Works Made for Hire

The proponents of term extension for works by individuals see many benefits to creators, the United States, and the public. It is for Congress to decide whether these arguments are compelling when applied to works by individuals. But *none* of these arguments are relevant to works made for hire.

We identified nine theoretical justifications for copyright term extension for works by individuals:[9]

1. The current term of protection is not long enough due to increases in normal life expectancy. ***Not Applicable to Works Made For Hire:*** Corporations are not natural authors. Motion pictures and other works made for hire are investments that are recovered quickly or not at all. Production companies write off their losses and recognize their profits in the first few years after release.

2. Authors or their estates should benefit from the extended commercial viability offered by new media. ***Not Applicable To Works Made For Hire:*** In the United States, companies that bought music and film copyrights will benefit from the extension. *But, there is no benefit to the people who made the films.* Speaking for the Motion Picture Association of America, Mr. Sorkin notes that the film producers have agreements with the actors unions.[10] However, these agreements require distributors to pay residuals only on films

---

[9] Most of these originally appeared in the Senate and House reports on copyright law revision for the Copyright Act of 1976, and were included as background information in the Copyright Office notice, note 6, *supra*. The reports note that these are "The arguments for changing this [fixed term with renewal] system to one based on the life of the author." Senate Report No. 94-473, 94th Congress, 1st Session (November 20, 1975), at page 117; House Report No. 94-1476, 94th Congress, 2d Session (September 3, 1976), at page 134.

[10] Testimony of Bernard Sorkin, *supra* at 71-72.

produced from 1960 to the present.[11] In this proceeding we are discussing when or if 1918 works will fall into the public domain!

3. Too short a term harms the author without a corresponding benefit to the public, since the public frequently pays the same for works in the public domain as it does for copyrighted works. and the only result is a commercial windfall to certain users at the author's expense.[12] ***Not Applicable To Works Made For Hire:*** Nothing could be further from the truth. The public pays *substantially* less for public domain motion pictures than they do for copyrighted works. Competition and low market entry barriers lead to lower prices. United States home video prices are led by public domain material at retail prices as low as $1.99, far below the price for the least expensive copyrighted material. When the same title is available from both public domain and "licensed" sources, the public domain price is virtually always lower. Basic common sense has taught us all that, if license fees or royalties have to be paid, prices will inevitably increase.[13]

4. This change is necessary to bring United States copyright terms "in line" with the European Community. ***Not Applicable To Works Made For Hire:*** Extension of copyright to 95 years for works made for hire would not bring United States copyright terms in line with the European Community. That could only be accomplished by a reduction of the present term to 70 years.

5. If U.S. copyright terms are not coextensive with those of the European Community, then due to the rule of shorter term, U.S. authors would not benefit from Europe's longer term of protection. ***Not Applicable To Works Made For Hire:*** Current and proposed U.S. copyright terms for works made for hire exceed current and proposed copyright terms in

---

[11] See: Rooney v. Columbia Pictures Industries, Inc., 538 F.Supp 211 (S.D.N.Y. 1982) (Civil Action No. 81 Civ. 3877 WCC), affirmed without opinion, 714 F.2d 117 (2d Cir. 1982) (Docket No. 82-7403), cert. denied, 460 U.S. 1084 (1983) (Docket No. 82-1380).

[12] This appeared in both the Senate and House reports prefaced by the phrase, "Although limitations on the term of copyright are obviously necessary, ..."

[13] See: Don Clark, "Patents May Raise Price of Information Highway," *The Wall Street Journal*, November 15, 1993, pp. B1, B3.

the member countries of the European Community. Therefore, under this proposal, U.S. users will be required to pay royalties for European works which are public domain in Europe, while American works will continue to be protected in the United States, but nowhere else. This will solely benefit European copyright holders.

6. Disproportionate copyright terms would have a significant impact on U.S. balance of payments. ***Not Applicable To Works Made For Hire:*** The current 75-year term for works made for hire in the U.S. is *already* longer than the proposed 70-year term in the European Community. Any increase in trade benefits Europe, since Europe has no intention of extending protection for American works made for hire.

7. An extended copyright term will provide incentive for creation of additional works. ***Not Applicable To Works Made For Hire:*** The works under discussion have already been created. No additional creative works will be produced as a result of term extension. Following this argument to its logical conclusion, a five-year copyright term would be the best incentive for additional works because it would force creators to create new works continuously. Under the present system, an author can retire after a few successes.[14] The relevance of this argument to works made for hire was addressed during the hearing on September 29. Mr. Sorkin agreed that, "It is true. The work has been created. You don't need an incentive for creation. But you do need an incentive for distribution and all that goes with distribution."[15] We believe that the best incentive for distribution is placing works in the public domain.

8. The growth in commercial media has substantially lengthened the commercial life of many works. ***Public Domain Benefits New Technologies:*** New media and methods of distribution often rely on reasonably priced public domain works to become established. That is exactly why they need a foundation of public domain material. For example, the home video sell-through market, currently one of the most profitable distribution channels for copyrighted motion pictures, was established with public domain motion pictures.

---

14 To take an extreme example, at age 33, George Lucas had an enormous success with *Star Wars* in 1977, and retired from directing.

15 Testimony of Bernard Sorkin, *supra* at 80.

Many cable networks rely heavily on public domain programming during their early years, then became big buyers of copyrighted material. Just as the Copyright Office should favor living authors over authors dead for half a century, copyright policies should encourage the development of new technologies.

9. Works are more available when protected by copyright, since publishers and other users cannot risk investing in the work unless assured of exclusive rights. ***Not Applicable To Works Made For Hire:*** Works are more available when in the public domain. Tens of thousands of sound features have been produced, yet only a few thousand are in active distribution. Despite the huge thirst of the home video and cable markets for feature film programming, owners of copyrighted works offer a small subset of the titles they own. Public domain makes all works available, not just those that with significant commercial value.

Since the arguments for term extension for works by individuals are not applicable to works made for hire, and since the copyright interests advance no arguments independently supporting term extension for works made for hire, why are they pushing so hard for this unwarranted extension?

B. Term Extension Will Increase the Prices Charged for Copyrighted Works

In a free market, the fewer the number of providers, the greater the ability of those providers to set prices. In the film industry there is seldom an excess of new films, and they command the highest prices. The market for older films also has relatively high prices, even with the availability of tens of thousands of feature films. There are two elements that have kept prices from being still higher: a wide variety of providers, and competition from distributors of films and television shows that fell into the public domain.

The ability of a small number of providers to control prices is a public policy concern as the major media companies prepare for the 500-channel cable universe and the information superhighway. The multiplicity of cable television options will provide many more opportunities

for the public to pay for programming. The information superhighway will be a toll road, with users paying access and use charges for copyrighted material.

This concern about the price spiral was verified recently by Peter Bart, editor of *Variety*, a former studio executive, and an unabashed champion of the studio system. Discussing the upcoming merger of Bell Atlantic and cable giant Telecommunications Inc., Bart queried:

> Since huge semi-monopolies are apt to charge exorbitant prices for their products, who do they think will be able to buy their interactive software? It is symbolic of '90s economics that the announcement of the Bell Atlantic deal coincided with the closing of 970 Woolworth stores and the elimination of 13,000 jobs— Woolworth being the ultimate symbol of middle-American stability.[16]

Near-exclusive control over programming by a small number of suppliers will *inevitably* lead to higher prices. This will replace the current large number of smaller Woolworth-size providers with a handful of colossal WalMart-size media companies. Public domain alternatives benefit the public by keeping prices reasonable through broad-based competition. A robust public domain keeps prices at a level based more on the cost of delivery than on perceived scarcity, because purchasers have options.

In 1915, the courts struck down the Motion Picture Patents Company, a price fixing cartel based on cross-licensed patents. The extension proposal envisions a new Motion Picture Copyright Trust, based on material copyrighted in perpetuity, available at high prices from a few distributors.

C. The Constitution Encourages a Vigorous Public Domain

Before discussing extending copyright, it is important to examine the purpose of copyright. The United States Constitution grants Congress the power "to promote the progress of science and useful arts by securing for *limited times* to authors and inventors the exclusive right to their respective writings and discoveries."[17]

---

16 Peter Bart, "Telco Titans: The Mystery Men," *Variety*, October 25, 1993, pp. 1, 150.

17 United States Constitution, Article 1, section 8, clause 3 (emphasis added).

It is instructive to note that when the proponents of term extension and copyright resurrection discussed the Constitutional purpose of copyright, they invariably omitted "limited times."[18] But that has always been key to the concept of copyright. The Supreme Court addressed this constitutional policy in *Twentieth Century Music Corporation v. Aiken*:

> The limited scope of the copyright holder's statutory monopoly, like the limited copyright term required by the Constitution, reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts.[19]

The public policy of the United States has always been to provide limited protection for a finite term to give creators incentives to create additional works. At the end of the limited term of protection, creative works fall into the public domain for the widest possible dissemination. The Librarian of Congress summarized the impact of the public domain when he noted that, "Today's creativity feeds on past creativity."[20] Public domain is an integral part of the creative process, and the courts have been consistent in recognizing this. Professor Litman points out that material in the public domain is "the raw material that all authors use" and thus "the public domain is the law's primary safeguard of the raw material that makes authorship possible."[21]

In 1990, the Supreme Court again noted that copyright serves a higher purpose than just providing income to authors and creators:

> Although dissemination of creative works is a goal of the Copyright Act, the Copyright Act creates a balance between the artist's right to control the work during the term of the copyright protection and the public's need for access to

---

18 Joint Comments of the Coalition of Creators and Copyright Owners, Comment Letter No. 3 in this proceeding, pp. 5, 22.; Testimony of Hal David, representing the Coalition of Creators and Copyright Owners, transcript of September 29 hearing, p. 7.

19 Twentieth Century Music Corporation v. Aiken, 422 U.S. 151, 156 (1975). See also: Sony Corp. v. Universal City Studios, Inc., 464 U.S. 417, 429 (1984): "It is intended to motivate the creative activity of authors and inventors by the provision of special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired."

20 October 19, 1993 Hearing on Copyright Reform Act of 1993 (S. 373) before the Subcommittee on Patents, Copyrights, and Trademarks, Testimony of James Billington.

21 Jessica Litman, "The Public Domain," 39 Emory L.J. 965, 977 (1990).

7

> creative works. The copyright term is limited so that the public will not be permanently deprived of the fruits of an artist's labors.[22]

Public domain is not the place where valueless copyrights go when they die. It is a natural part of the creative process. Public domain serves a purpose, just as the limited term of protection serves a purpose. Copyright is a tradeoff, with the ultimate goal of serving the public good of authorship, not the private gain of the author. As Professor Litman noted, "A vigorous public domain is a crucial buttress to the copyright system; without the public domain, it might be impossible to tolerate copyright at all."[23]

D. The Public Domain Benefits The Public

The effective operation of the public domain market has played a large role in making our film heritage available to the public. This allows the public to decide which films it wants to see. This has contributed to a resurgence of interest in films produced by small studios like Mascot and Monogram, forgotten filmmakers like Oscar Micheaux and Spencer Williams, Jr. and discredited genres.[24]

Public Domain Makes Existing Works More Available. Analyzing the success of one public domain title, the Associated Press noted, "Except for the mistake of a film company lawyer, IT'S A WONDERFUL LIFE (1946) might not have become the most popular movie of the holiday season." The film was a commercial failure on its first release, and its distributor was not offering it widely when copyright on the film expired in 1973. The film was only recognized as a classic when it fell into the public domain and was widely seen for the first time. "It slowly gained prominence until by 1980, it was an American cultural phenomenon," notes one of several books on the film.[25]

---

[22] Stewart v. Abend, 495 U.S. 207, 228 (1990).

[23] Litman, *supra* at 977.

[24] See "Life With Video" section in *Film Comment*, July-August, 1991: Elliot Forbes, "The 'Lost' World," pp. 41-42; Maitland McDonagh, "The House By the Cemetery," pp. 43-46; Peter Hogue, "Riders of the Dawn," pp. 47-48.

[25] Bob Thomas, "Wonderful Facts About Holiday Film Perennial," Associated Press Wire Service, December 14, 1992.; Jeanine Basinger, *The* It's a Wonderful Life *Book* (New York: Knopf, 1986) p. 68.

Judging from advertisements in video collector publications, public domain motion pictures are available on video from several hundred suppliers. Public domain frequently raises the profile of forgotten films, increasing public awareness, and hence public demand. A number of these films might not have been released by the owners of the original negatives if not for the competition from public domain sources.

Public Domain Works Are Available to the Public at Low Cost. Public domain costs less. Since most major public domain titles are available in "licensed" versions, public domain suppliers have to offer lower prices to compete. Almost all public domain titles are offered by multiple suppliers. In the broadcast and cable television markets, there are more than two dozen distributors of public domain films offering low-cost programming for television stations, public broadcasting and cable programming services.[26] As documented in a study for The Committee for Film Preservation and Public Access, public domain video cassettes are significantly discounted from the licensed editions of the same works; the study, prepared by media economist Dr. Douglas Gomery of the University of Maryland, is being filed concurrently with this statement.

While copyrighted titles can compete on exclusivity, public domain material competes on price, packaging and quality. Small public domain distributors do not have the overhead and profit expectations of larger suppliers. With vigorous competition, prices will inevitably drop. Because many public domain titles are distributed to mass merchandisers, market forces require first-rate packaging, comparable to licensed titles. While the quality of public domain titles varies just like licensed product, numerous public domain suppliers brag that their films originate from 35mm prints or negatives, often superior to their licensed competition. As one industry commentator noted, public domain suppliers offer "features and cartoon collections of startling quality at dime store prices."[27] The widespread availability of public domain titles increases the volume and breadth of alternatives for the public.

---

26 Channels Television Programming Source Books, 1993-94 (four volumes). See particularly the film "packages" listed in volume 3.

27 Mark Trost, "PD Cue and Review," *Video Business Show Daily*, August 8, 1990, pp. 132, 134. In his examination of specific public domain releases, Trost noted that "Ironically, the GoodTimes version of the Dick Tracy serial appears to come from better pre-print material (possibly a 35mm film) than the tapes from VCI which have the official blessing of the Dick Tracy

Public Domain Also Brings Down the Prices of Copyrighted Works. Copyright allows the owner to have a exclusive right. When there is competition from lower priced works whose suppliers do not enjoy a monopoly, market forces require the owner of the copyrighted material to lower their prices on comparable material.

Public Domain Encourages the Creation of New Works. Public domain means that creative works are more widely distributed, and the wide availability of ideas contributes to creativity, benefiting everyone. It is due to the worldwide public domain status of Gaston Leroux's 1910 novel "The Phantom of the Opera" that there are three completely different stage musicals touring the United States. Similarly, the public domain 1909 novel "The Secret Garden" by Frances Hodgson Burnett is allowed to inspire a musical for Broadway, and two dramas: a 1987 Hallmark Hall of Fame production, and a different interpretation for the movies in 1993.

The Copyright Office registration records show innumerable copyright registrations for adaptations of public domain material. Throttling the public domain limits that creativity. Since many copyrighted works are not in distribution, no one benefits from their existence. Innumerable works go uncreated because of the lack of access to America's creative memory and the refusal of copyright owners to grant licenses at affordable rates. As Professor Litman notes, the purpose of copyright law is to encourage "authorship," not authors, and a vigorous public domain is necessary to encourage authorship.[28]

Public Domain Material Is Used to Educate. Educational producers use public domain footage in their films to instruct and entertain. Documentary filmmakers can afford to make films for specialized audiences because they can get public domain material at reasonable prices from sources such as the National Archives. The news programs on CNN, the broadcast networks and C-SPAN constantly use readily available public domain footage to provide historical insight into current issues.[29]

---

copyright owners."

[28] Litman, *supra* at 969.

[29] See: Axelbank v. Rony, 277 F.2d 314 (9th Cir. 1960), in which same historical footage of the Russian revolution was used as the basis of two theatrical features, one television special and a television series.

Fifteen to twenty years ago, with the exception of network productions, most documentary films consisted of perhaps 80 to 90 percent interviews, with small amounts of actuality footage. These programs were often dull because the events discussed were not even shown. Since the wide availability of public domain footage, the ratio is reversed, and many documentaries are virtually all historical film footage, with the interviews serving to link the visuals. This has helped history come alive for Americans, allowing low-cost documentaries to be a staple of several cable networks.

Public Domain Supports New Technologies. New technologies such as multimedia, CD-ROM and computer networks are big users of public domain written material, still photos and, soon, motion picture excerpts. These are risky investments, and just as the home video market began with public domain material, in their early stages, they will rely heavily on the public domain.

E. Copyright Owners Are Themselves Extensive Users of Public Domain Material

The underpinning of creativity is the public domain, as all authors rely on those who have gone before. In the Twentieth Century, with an explosion of different media, derivative works have become much more important as a source of creativity. For all of their protestations against competition from public domain suppliers, the major motion picture producers use public domain material. There is no stronger defender of copyright than The Walt Disney Company, yet their last three animated features were based on public domain stories. The creative personnel took part of the common body of knowledge, expanded and added to it and received copyright protection on their additions.[30]

In addition, several recent lawsuits found major studios using public domain as their defense against charges of appropriating the creative work of others.[31] In addition, the publishing arms of

---

30 The animated features are THE LITTLE MERMAID (1989), based on the 1837 story by Hans Christian Andersen; BEAUTY AND THE BEAST (1991), based on the story by Mme. Leprince de Beaumont from 1757; and ALADDIN (1992), based on a story in *The Arabian Nights*, written circa. 950.

31 Harvey Cartoons v. Columbia Pictures Industries, Inc., 645 F.Supp. 1564 (S.D.N.Y. 1986); "Columbia furthers claims that the image of 'Fatso' has entered the public domain and may

these integrated media giants are heavy users of the public domain. Paramount's Simon and Schuster and Prentice-Hall, Time Warner's Warner Publishing, Disney's Hyperion Books, and News Corp.'s HarperCollins publish works that are in the public domain or use public domain photos.

For all the protestations of these companies against the use by others of public domain material, a healthy public domain benefits everyone. While it encourages new works, it is the ingenuity of the new authors which determines whether the new creativity will be welcomed by the public.

F. "Owners" of Public Domain Works Continue to Distribute Them and the Public Benefits

While copyright holders speak of the loss of copyright as a catastrophe which destroys the commercial value of the work, that is not the case with works made for hire. As David Pierce described, "Even if a copyright has lapsed, however, the owner still has an interest in the film. The owner still controls all of their negatives and prints, and the titles continue to be leased to television and nontheatrical markets just as before. The only difference is that the owners can no longer promise exclusivity."[32]

They Have Access to the Best Materials. If owners have invested in upkeep and preservation, they have the best materials and can charge a premium. Frank Capra's IT'S A WONDERFUL LIFE has been a longtime staple of the public domain market, with home video cassettes priced as low as $3.99 at retail. Nevertheless, in the face of public domain competition, over the years Republic Pictures Home Video has continued with great success to issue its own "authorized" home video cassettes.[33] Indeed, special "45th Anniversary" copies issued by Republic in 1991 have sold 200,000 cassettes at $19.95 retail.[34]

---

be freely copied."; Bourne Co. v. The Walt Disney Company, 1993 Copyright Law Decisions 27076 (S.D.N.Y. 1992); "Defendents argue that ... the copyrights are invalid and unenforceable in this action."

32 David Pierce, "Copyright Lost," *American Film*, October, 1985, pp. 68-70.

33 In June, 1993, Republic announced that it had acquired exclusive motion picture rights to certain musical compositions on the film's soundtrack and exclusive motion picture rights to the short story on which the film was based. Republic said it would take legal action against anyone

They Can More Readily Create Derivative Works. Owners of works that fall into the public domain can still get certain protection and royalties. Owners of black and white films can colorize them for new copyrights. Some distributors have added outtakes, new music or new subtitles, and copyrighted the new edition.

Public Domain Encourages Owners to Invest in Better Copies and Restored Versions. By forcing former copyright owners to compete with public domain copies, the natural operation of the market gives tremendous incentive to offer *better copies*.

ROCCO AND HIS BROTHERS (1960), the Italian classic directed by Luchino Visconti, and THE WAGES OF FEAR (1952), the French classic directed by Henri-Georges Clouzot, have long been available in the public domain market in their shortened American release versions. Rather than release the familiar versions, their "owners" were required to invest in *complete, restored versions* of films that have long been available only in truncated form. If not for competition from public domain providers, the distributors might have released the same, shortened versions that were previously offered. Clearly, the public benefits.

G. Copyright Control Often Reduces the Availability of Copyrighted Works

Copyright is the right to say NO! As the Supreme Court noted, "nothing in the copyright statutes would prevent an author from hoarding all of his works during the term of copyright."[35] And that is what often happens.

---

continuing to release unauthorized copies. See: Eileen Fitzpatrick, "A Copyright on Life," *Video Business*, June 25, 1993, pp. 1, 10. However, the Republic announcement does not affect the validity of the experience acquired when the film was treated by everyone, including Republic, as if it were in the public domain.

[34] Seth Goldstein, "Republic Claims Wonderful Life Rights," *Billboard*, June 26, 1993, pp. 9, 95. Assuming that Republic received about $12 per cassette (60% of the retail price is the trade standard), the 1991 anniversary edition alone generated revenues of $2,400,000 for Republic.

[35] Stewart v. Abend, 495 U.S. 207, 228 (1990). See also: Fox Film v. Doyal, 286 U.S. 123, 127 (1932): "The owner of the copyright, if he pleases, may refrain from vending or licensing and content himself with simply exercising the right to exclude others from using his property."

Many creative works are out of distribution regardless of public demand. For many critics and fans, the highlight of Sammy Davis Jr.'s career was his performance as Sportin' Life in Samuel Goldwyn's film production of PORGY AND BESS (1959). Modern audiences will never know because the estates of George and Ira Gershwin forbid the film to be shown. Similarly, Irving Berlin's estate refuses to extend the license for the 1950 film version of ANNIE GET YOUR GUN. In both of these cases, the public will only benefit from the great creativity that went into these film productions when the copyrights on the underlying shows finally expire.

Author Willa Cather sold her novel *A Lost Lady* to the movies for a 1925 film version. She so disliked the result that Cather "expressly forbade her publishers to sell movie rights to any of her other books or stories and she saw to it that the prohibition was written into her will."[36] Only because the copyright to her 1913 *O Pioneers!* finally expired was the public given the opportunity to see a film adaptation of Cather's classic novel. This production for the Hallmark Hall of Fame starred Jessica Lange.[37] Imagine how many young readers were introduced to Cather's works by this film.

Not all of these decisions to withhold works are based on creative disagreements. Indeed, The Walt Disney Company has announced plans to permanently withdraw FANTASIA (1940) in favor of a new version, with some new footage. The original version of FANTASIA will disappear and be forever unavailable. As Walt Disney Studios chairman Jeffrey Katzenberg explained, FANTASIA "will not exist in the forms it exists in today. The film is being retired."[38]

---

36 Phyllis C. Robinson, *WILLA: The Life of Willa Cather* (Doubleday & Company: Garden City, 1983), p. 239.

37 A recent visit to a bookstore discloses that the Vintage Books, the authorized publisher of Willa Cather's works, offers a paperback edition of *O Pioneers!* for $9.00, the identical price as her 1923 copyrighted novel *A Lost Lady*. However, thanks to its public domain status, other paperback editions of *O Pioneers!* are available. The Tor edition is $3.99, the Signet Classics edition is $4.50, while the Penguin edition is $7.99. The public benefits from public domain, both from the variety of editions and the uniformly lower prices. The entire text of *O Pioneers!* is also available at no charge over the Internet.

38 Marc Berman, "Disney Plans Modern 'Fantasia'," *Daily Variety*, July 15, 1991, p. 1.

What limits this 'hoarding' of creative works by their owners? In a recent decision, writing for a unanimous court, Justice O'Connor noted that the Constitution "reflects a balance between the need to encourage innovation and the avoidance of monopolies which stifle competition without any concomitant advance in the 'Progress of Science and Useful Arts.'"[39] The perpetual unavailability shown in these examples does not benefit the public. The public only benefits when there is a reasonable term of protection.

H. Public Access, Not Term Extension, Is the Real Issue With Motion Pictures

The copyright extension proposal would obviously have its most immediate effect on the decade of films copyrighted from 1918 to 1927. With only a handful of exceptions, these films are unavailable to the public. Virtually all the copyrighted survivors of this decade of film history remain on the shelf, unseen in the classroom, video store or on television or cable.

Extending the current term of copyright will guarantee that the public will continue to be deprived of hundreds of films, long ago abandoned by their creators, but still protected by copyright. The general public has no opportunity to see many copyrighted classics: Frank Borzage's romantic masterpiece LUCKY STAR (1929), recently restored from a print found in Europe; Robert Flaherty's MOANA (1926), filmed on location in Samoa by the great documentarian; the part-Technicolor REDSKIN (1929), a story of the Pueblo Indians adapting to the America of the 1920s; and the legendary original silent film version of PETER PAN (1923), with Betty Bronson personally selected by author James Barrie to play the title role.

Thousands of nearly forgotten American films are awaiting the freedom of public domain.[40] For many more, public domain is meaningless because their makers lost all copies to poor storage, neglect and intentional destruction. In fact, a 1993 study by the National Film Preservation Board

---

39 Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 146 (1989).

40 A recent cable television program discussed the career of actress Mary Pickford, noting that, "Her admirers bemoan that Mary's own wishes have kept generations from knowing her ... Thanks to 75-year copyrights expiring, prints of Mary Pickford classics like POOR LITTLE RICH GIRL are popping up all over the country. Although she was 85 when she died, this is how Mary Pickford will again be remembered." AMC IN HOLLYWOOD, American Movie Classics, October 31, 1993.

2-

of the Library of Congress documents how the vast majority of films from the silent era have been lost forever due to ownership apathy.[41] The scattered survivors were donated to film archives, which preserve, catalog and store them primarily with Federal funds. For many of these films, all that is limiting their availability to the public is expiration of their copyrights.

If these films were being actively distributed and licensed in their complete form, we might expect to hear copyright holders claim that their continued investment and stewardship deserves to be rewarded. The music publishers point to collective administration arrangements like the Harry Fox Agency (for songs), and the compulsory licensing requirement (for phonorecords). They argue that these arrangements allow for the widest possible distribution. Unfortunately, no such procedures are in place for motion pictures. Not only do owners charge prohibitively high royalties for those few licenses they do grant, they are frequently unable to provide materials, sending licensors to the film archives.

As proposed, the current owners of these copyrights do nothing in return for this extra copyright protection. They assume no obligation to preserve their films, make them available, or even grant permission for archive screenings. There is no shepherding of the public trust and there is certainly no public benefit.

I. Term Extension Would Destroy Incentives for Film Preservation

America's national film collection is spread among many film archives. But film preservation is too important and too expensive to be left solely to the film archives. It should be supported and practiced by everyone.

Distribution of public domain works requires the creation of new intermediate and master material. There are many examples of enormous numbers of original negatives and prints abandoned at storage depots and laboratories. The public domain titles are purchased by stock footage libraries and public domain distributors, who invest in their preservation and storage, and make the films widely available. Everything else goes into the landfill.

---

41 *Film Preservation 1993: A Study of the Current State of American Film Preservation*, Library of Congress, Volume 1, p. 61.

Public domain has saved many original negatives from destruction, and allowed many films considered lost in their country of origin to survive in the United States. Without public domain, all of this material would have been destroyed, robbing us of a large portion of our film heritage.

III. Any Attempt to Resurrect the Copyrights in Public Domain Works Would be Unconstitutional, Undesirable and Impractical

It is long-settled constitutional policy in the United States that "matter once in the public domain must remain in the public domain."[42] Nevertheless, the groups who filed statements or testified at the September 29 hearing proposed not only term extension, but also "resurrection" of the copyrights for material that is already in the public domain.[43] They did so, moreover, in a casual, almost offhand fashion, without any consideration of the serious constitutional and practical problems presented by their proposal.

Given the tenor of their comments, it appears that proponents of resurrection do not accept the concept of "limited" terms for copyrights. But that basic policy decision has already been made by the U.S. Constitution. It requires only a small leap of the imagination to speculate that proponents of resurrection would probably define a "limited" copyright term as "perpetuity minus one day."

For many years, the "owners" of material that is in the public domain have attempted to use alternative legal theories to secure "backdoor" copyright protection for such material. These attempts have been consistently rejected by the courts.[44] Now, with the "backdoor" approach

---

42 Kewanee Oil Co. v. Bicron Corp., 416 U.S. 470, 484 (1974).

43 The proponents of term extension refer to this as "retroactivity," a term that obfuscates more than it illuminates. David Nimmer is much more candid and precise by using the term "resurrection." "Nation, Duration, Violation, Harmonization: An International Copyright Proposal for the United States," 55 L & Contemp. Probs., 228-232 (Spring 1992). We use Mr. Nimmer's terminology because of its clarity and honesty.

44 See, for example, The "Mark Twain" Case, 14 Fed. 728 (N.D.Ill. 1883), G. Ricordi & Co., v. Haendler, 194 F.2d 914 (2d Cir. 1952), cited with approval in Sears, Roebuck & Co., v. Stiffel Co., 376 U.S. 225, 233 (1964); Axelbank v. Rony, 277 F.2d 314 (9th Cir. 1960); Classic Film Museum. Inc. v. Warner Bros., Inc. 597 F.2d 13 (1st Cir. 1979); Greenwich Film Productions v. DRG Records, 1992 Copyright Law Decisions 27,004 (S.D.N.Y. 1992).

exhausted, copyright interests propose "frontdoor" legislation to give new copyright protection to material that has already fallen into the public domain. Any such legislation would clearly be unconstitutional and should not even be considered by the Copyright Office or by Congress.[45]

The Supreme Court has repeatedly insisted on "allowing free access to copy whatever the federal patent and copyright laws leave in the public domain."[46] And in the case of patents, which derive from the same clause of the Constitution and are subject to the same constitutional considerations as copyrights, the Court has made it emphatically clear that "Congress may not authorize the issuance of patents whose effects are to remove existent knowledge from the public domain, *or to restrict free access to materials already available*."[47] This constitutional limitation on the exercise of Congressional power over patents and copyrights was recently reaffirmed unanimously by the Supreme Court.[48] Indeed, as the Court noted, Thomas Jefferson believed that granting a patent for an idea already in the public domain would be "akin to an *ex post facto* law."[49] Of course, that would be equally true of legislation resurrecting the copyrights for material that is in the public domain.

The copyright clause is not the only limitation on Congressional power in this area, and any resurrection legislation would also raise significant First Amendment problems. For the inherent tension between the Copyright Act and the First Amendment is held in balance not only by the

---

In addition, some former copyright owners have attempted to use various "gimmicks" to revive, restore or reclaim copyrights in material that has passed into the public domain. The courts have consistently rejected these attempts, too, even in situations where the Copyright Office had issued registration certificates. See, for example, Scandia House Enterprises, Inc. v. Dam Things Establishment, 243 F.Supp. 450 (D.D.C. 1965), Gray v. Eskimo Pie Corporation, 244 F.Supp. 785 (D.Del. 1965); American Fabrics Co. v. Lace Art, Inc., 291 F.Supp. 589 (S.D.N.Y. 1968); Jacobs v. Robitaille, 406 F.Supp. 1145 (D.S.E. 1976).

45 David Nimmer says that copyright resurrection is so fraught with political and constitutional problems that the "issue is best left out of the present calculus." Nimmer, *supra* at 236.

46 Compco Corp. v. Day-Brite Lighting, 376 U.S. 234, 237 (1964).

47 Graham v. John Deere Co., 383 U.S. 1, 6 (1966) (emphasis added).

48 Bonito Boats, Inc. v. Thunder Craft Boats, Inc., 489 U.S. 141, 146 (1989).

49 *Id.* p. 147.

"fair use" doctrine, but also by the widespread availability of large amounts of public domain material. In situations where "fair use" does not apply, the public domain alternative is often the "safety valve" preventing a head-on clash between speech and copyright.[50] Resurrection legislation, which by definition would remove huge amounts of currently available material from the public domain, unquestionably would force courts to re-examine the entire balance between the Copyright Act and the First Amendment. Indeed, we doubt that any resurrection law could itself survive a challenge under the First Amendment.

Wholly apart from the insuperable constitutional obstacles, legislation that would resurrect the copyrights in public domain material would represent terrible public policy. To cite just a few brief examples in the area of motion pictures:

1. Footage currently in the public domain could no longer be employed to create totally new works, such as documentaries, educational films, or television news specials. And the hundreds of American companies that currently sell public domain "stock footage" would be put out of business.[51]

2. Thousands of new works employing public domain footage are already in existence and in wide circulation. These will have to be re-edited or, more likely, withdrawn from circulation completely.

3. Thousands of public domain motion pictures currently in circulation in their original form will have to be withdrawn and will be completely unavailable to the American public, since their original corporate owners are no longer in existence and had no successors or assigns. The preservation material prepared by their distributors will be junked, as it will no longer have any value to them.

---

50 See, for example, Roy Export Company Establishment of Vaduz, Liechtenstein v. Columbia Broadcasting System, Inc., 672 F.2d 1095, 1100 (2d Cir. 1982), cert. denied, 459 U.S. 826 (1982): "The showing of copyrighted films was not essential to CBS's news report of Charlie Chaplin's death or to its assessment of his place in history; public domain films were available for the purpose...." It is because of this, the Court noted, that it did not have to face the question of whether, in addition to "fair use," there is a First Amendment exception to the Copyright Act.

51 For listings of 1,750 public and commercial "stock footage" collections, see *Footage 89* and its supplement *Footage 91* (New York: Prelinger Associates, Inc., 1989 and 1991).

4. In the case of many motion pictures, their former owners "junked," abandoned or sold off negatives and prints once those films passed into the public domain. If the copyrights in these films are now resurrected, their owners (assuming they can be found and can prove their claims) lack the physical elements necessary to exploit these films, At the same time, those who lawfully own negatives or prints for some of these films (for many are truly "lost") will be precluded from exploiting them. Clearly, the public will be the loser.

5. While many people would comply with any resurrection law (until it is declared unconstitutional), it to obvious that many others would not, either because of ignorance of the law or willfulness. At the same time, those who seek to enforce resurrected copyrights will in almost all cases face impossible evidentiary problems, since documents that might validate their "claims" have long since been lost or discarded.

6. The Copyright Act of 1976 expanded significantly the "subject matter eligible for copyright protection" so that protection "now extends to an extraordinary variety of products that saturate our society."[52] Moreover, copyright interests continue to seek still more "rights."[53] Clearly, if copyrights are resurrected, such resurrection will encompass a huge variety of material that was not copyrightable at the time it was created and first published. This would not only be unwarranted, but ludicrous as well, for it would truly make "the field of intellectual property ... resemble a game of conceptual Pac Man In which everything in sight is being gobbled up."[54]

7. Any resurrection law will create tremendous expectations, especially on the part of Europeans whose films have already passed into the U.S. public domain.[55] When the law is declared unconstitutional or if enforcement proves impossible, those hopes will obviously

---

52 Litman, *supra* at 965, 993, 995.

53 See Brooks Boliek, "Call for Copyright Protection," *The Hollywood Reporter*, November 19, 1993, pp. 4, 57.

54 Lange, Recognizing the Public Domain, 44 Law & Contemp. Probs. 147, 156 (Autumn 1981).

55 Jennifer Clark, "Top Directors Berned by Yank 'Legal Piracy' of Classic Pix," *Variety*, March 9, 1992, pp. 39, 46.

be dashed and anger over the copyright situation in the U.S. will be much worse than it is now. Clearly, retaliation will follow.

Numerous other examples could be offered, but the point is already obvious. It is not constitutional, desirable or practical to resurrect the copyrights in material that has already passed into the public domain.

IV. Conclusion

Copyright extension would benefit a few very large corporations at the expense of the American public. The desire of these companies to extend the copyright term for works made for hire cannot be the loss of revenues from these old productions, because they make virtually none of them available to the public. Instead, these copyright owners hoard their old motion pictures to concentrate market interest on those titles they do offer.

None of the hypothesized benefits of copyright extension for works for individuals apply to works made for hire. Copyright extension will lead only to higher prices and reduced availability of motion pictures to the public. Extending an already lengthy copyright term is counter to the purpose of copyright stated in the Constitution and articulated by the Supreme Court.

A limited copyright term benefits the public, making public domain works widely available and at lower cost, while keeping the price and quality of copyrighted works competitive. Public domain also provides the impetus and building blocks for new creativity. Professor Lange described the loss, "As access to the public domain is choked, or even closed off altogether, the public loses too: loses the rich heritage of its culture, the rich presence of new works derived from that culture, and the rich promise of works to come."[56]

In the case of motion pictures, relatively few films survive from the silent and early sound years, and only public domain will make these films more available for study and enjoyment. Copyright extension would lead directly to the destruction of many films in private hands. Since, by definition, this is material from the past, the public domain is especially important for its support to education and our understanding of history.

---

56 Lange, *supra* at 147, 165.

Copyright resurrection was undoubtably injected into this argument to make the grab for copyright extension seem reasonable by comparison. Yet the arguments for copyright resurrection only serve to demonstrate that the copyright monopolists believe that anything that benefits them must somehow benefit the public.

We believe that this discussion comes down to a single issue. The public policy stated by the Constitution and Supreme Court calls for a balance of the interests of the creator and the public, with ultimate goal of wide availability. The question for the Copyright Office is: "Will copyright extension for motion pictures make them more widely available?"

The answer is obvious. Copyright extension will keep motion pictures out of circulation. That is why the Copyright Office and Congress should not recommend or enact any extension of the current 75-year term for works made for hire. And copyright resurrection should be rejected firmly, for that idea is indeed as "crazy as it sounds."[57] The copyrights on these works have provided three quarters of a century of benefit to their owners. The time has come for these works to provide another benefit, to "serve the cause of promoting broad public availability of literature, music, and the other arts."[58]

Respectfully submitted,

THE COMMITTEE FOR FILM PRESERVATION
AND PUBLIC ACCESS

---

[57] Seth Goldstein, "Picture This: PD Armageddon?," *Billboard*, November 13, 1993, p. 79.

[58] Twentieth Century Music Corporation v. Aiken, *supra* at 156.

The Committee For Film Preservation and Public Access

Joe Dante is a major motion picture director and producer. His films include THE TWILIGHT ZONE- THE MOVIE, GREMLINS, INNERSPACE and MATINEE. Mr. Dante is also a journalist, a member of the Directors Guild of America, and a member of Screen Actors Guild.

Bernard C. Dietz, attorney at law, served 26 years at the U.S. Copyright Office. His positions included Head of the Visual Arts Section from 1969-1981, and head of the Copyright Renewal Section, 1981-1993. Mr. Dietz is the author of numerous articles, co-author of *Compendium of Copyright Office Practices II*, and a lecturer. He is also a member of the Editorial Board of the European Intellectual Property Review, Oxford, England.

William K. Everson is the leading film historian. Professor Everson is the author of numerous books including *American Silent Film, The Films of Laurel and Hardy, A Pictorial History of the Western Film, and The Detective in Film.* He is Professor of Cinema, New York University, archival consultant, journalist, film critic, lecturer, and winner of Best Film Book Award at the Venice Film festival for *The Western.*

Robert A. Harris is a film archivist/producer. He was responsible for the 1981 American release of Kevin Brownlow's restoration of Abel Gance's NAPOLEON, in concert with Zoetrope Studios. Active in film restoration and preservation, Mr. Harris reconstructed and restored David Lean's LAWRENCE OF ARABIA for Columbia Pictures in 1989, and Stanley Kubrick's SPARTACUS for Universal/MCA in 1991. With Martin Scorsese, Mr. Harris also produced THE GRIFTERS (1990).

Richard T. Jameson is Editor of *Film Comment* magazine. He is an author and a member of the National Society of Film Critics. He was Film Lecturer in Cinema Studies at the University of Washington from 1969-1980.

Robert King is Editor and General Manager of *Classic Images* magazine. He is an author, journalist and film historian.

Timothy Lucas is a journalist. Editor and publisher of *Video Watchdog* magazine, Mr. Lucas is a novelist, film historian, and film critic.

Gregory Luce is a film historian and archivist, and the owner of several copyrighted motion pictures. A theater owner in Oregon, Mr. Luce is also a distributor of motion pictures to home video, television, cable and stock footage markets. His company distributes a large number of rare motion pictures, including copyrighted titles which he owns or has licensed from copyright holders, and films in the public domain. He is a former radio and television on-air personality.

Leonard Maltin is a television personality (seen weekly on the nationally syndicated ENTERTAINMENT TONIGHT as film correspondent, historian, and critic), author (*Leonard Maltin's TV Movies & Video Guide, Of Mice and Magic, Movie Comedy Teams, The Real Stars, The Disney Story*), journalist (articles appearing in *The New York Times, Smithsonian, T.V. Guide*, etc.), actor and video producer.

Steven Newmark is owner and president of Image Works Inc. Mr. Newmark is a film archivist, television and video distributor, and stock footage distributor. His home video business distributes both licensed and public domain titles.

L. Ray Patterson is a copyright scholar, Pope Brock Professor of Law, University of Georgia School of Law. Mr. Patterson is an author whose works include *Copyright in Historical Perspective, The Nature of Copyright*, plus many articles on copyright. He is a member of The American Law Institute.

Samuel A. Peeples is an author (works include THE MAN WHO DIED TWICE), screenwriter (the original Star Trek pilot WHERE NO MAN HAS GONE BEFORE, LANCER television series, dozens of others), motion picture and television producer (films include WALKING TALL, ADVANCE TO THE REAR), journalist and former monthly column writer for *Films In Review*, and a retired member of the Writers Guild of America, West, Inc.

David Pierce is a copyright consultant and writer. Mr. Pierce is the author of *Motion Picture Copyrights & Renewals: 1950-1959*, and his articles on film history have appeared in *American Film* and *American Cinematographer*. He also produces the laserdisc release of classic films. Mr. Pierce is co-producer of *The Age of Exploration*, a series of eight silent feature films. The series was selected by *Video Magazine* as one of the top ten video programs of 1992.

Fred Olen Ray is an independent motion picture director and producer. His films include MOON IN SCORPIO, ARMED RESPONSE, CYCLONE, and COMMANDO SQUAD. He is president of American Independent Productions, Inc., a motion picture distributor. Mr. Ray is also a screenwriter, poet, journalist, film historian, actor, and member of Screen Actors Guild. He is a former member of the Florida Motion Picture and Television Association.

Michael V. Rotello is an Illinois State Representative from the 67th District. Mr. Rotello served as chairman of the Legislative and Community Development Committees. Former Rockford, Illinois, City Councilman. County auditor, Winnebago County, Illinois, 1984-1990. Delegate, 1976, 1980 and 1992 National Democratic Conventions. Mr. Rotello is an active member of the Knights of Columbus.

Bonnie Rowan is the author of *Scholar's Guide to Washington, D.C. Media Collections*, published by Johns Hopkins University Press. Ms. Rowan is a founder of the Washington Media Research Council, which supports greater access to public collections. As a researcher, Ms. Rowan has worked on numerous documentaries, including *Marion Anderson, The Real West* and *The Great Depression*. She taught film history at Towson State University for seven years.

Anthony Slide has authored or edited more than 40 books on motion pictures and popular entertainment. He was associate archivist at the American Film Institute and the first resident film historian of the Academy of Motion Picture Arts and Sciences. In 1990, Mr. Slide received an honorary Doctorate of Letters from Bowling Green University. At that time, Lillian Gish called him "the preeminent historian of the silent film."

George Turner is the former editor of *American Cinematographer* and the magazine's historical consultant. He is the author of *The Making of King Kong* (with Orville Goldner), *Forgotten Horrors* (with Michael H. Price), and the editor of *The Cinema of Adventure, Romance & Terror*, and *The A.S.C. Treasury of Visual Effects*. He works in the film and television industries as a production illustrator and special effects artist.

Bill Warren is an author whose works include *Keep Watching the Skies*, volumes one and two. Mr. Warren is also a film historian, journalist, and a Contributing Research Editor for *Leonard Maltin's TV Movies & Video Guide*.

Matthew Weisman is a screenwriter, motion picture producer and Adjunct Associate Professor at The University of Southern California School of Cinema. He is also a member of The Writers Guild of America.

95

26 November 1993

Research Report:

The Economics of Term Extension for Motion Pictures

by

Douglas Gomery
University of Maryland

for

The Committee for Film Preservation and Public Access

This is a report in the matter of the Docket No. RM 93-8, to the Copyright Office Notice of Inquiry on Duration of Copyright Term of Protection.

Introduction

This report is written in opposition of the proposed extension of the copyright law for works of hire, proposed to extend it from 75 to 95 years.

This report argues this proposed change is NOT necessary for motion pictures (or audiovisual works as defined in the law).

Moreover, it is not good public policy to revive copyrights for motion pictures already in the public domain.

This action as it is contrary to the purpose of the United States Constitution.

Such an extension would harm users in that, as is demonstrated below, prices would be higher and availability lessened.

And such a proposed extension would severely effect the teaching of the mass media in universities and colleges across this nation.

The United States of America needs to have ready access to its motion picture heritage, not have films from the past placed on shelves, out of sight, which will happen if the proposed extension is made into law.

Basic Economic Arguments

There certainly is no reason to believe that an extended copyright term for works for hire will have any positive value as an incentive to lead to greater distribution of existing works.

Surely creators already have a high protection term with the current 75-year term.

They do not need higher protections.

Required longer terms have not been needed in the past, and if anything the rise of modern computer and video technology leads one not to press for an extension of the term.

The goal ought to be more access, not less, as the United States moves into a world of interactive, 500 channels.

Still the United States Copyright Office is being asked to propose that the United States Congress and the President of the United States extend the copyright term for motion pictures by 20 years, from 75 years to 95 years.

This will have the effect of withholding our motion picture heritage for 20 years, immediately affecting the silent film era which the major United States movie companies (and dominant copyright holders) seem uninterested in marketing.

The proposed 95-year copyright term would thus have important and significant negative implications for the scholarly research and viewing of silent films. This proposed extension would mean that future audiences would not be introduced to silent films, but that these silent classics would by-and-large simply sit in restricted situations as the copyright holders fail to market them,

rather than exposing them to audiences and possible new fans, students, and scholars.

Public policy ought to focus upon making older films -- all of silent cinema -- as widely available as possible. These works have been fully exploited by their original makers and now need to be accessed by the general public at large.

Public policy ought to focus on the key trade. That is the copyright law trades limited monopoly power -- which the Hollywood motion picture industry has long enjoyed and exploited --- for the promise that the viewing public (who through its representatives which granted that very legal monopoly) will eventually have full and complete access.

The balance of that trade is proper now, and needs not be changed.

Flawed Assumptions

The support for this proposed term extension is partially based upon two flawed assumptions.

FIRST, it is not true that too short a copyright term harms the author without corresponding benefit to the public. Once a film goes into public domain the public finds that motion picture widely available -- at reasonable and affordable prices.

It is not true that the public pays the same for the works in public domain as it does for copyrighted works. Public domain films are generally cheaper.

SECOND, it is not true that public domain works are less available than copyrighted works. The copyright owner -- granted an exclusive monopoly right -- has an incentive to market the film, but only up to a point. When and if the marginal cost of putting out the work exceeds the expected marginal revenue, the copyright monopolist will not issue the film.

A monopolist will do less in terms of packaging and surely not try to compete in price. With a monopoly copyright little effort is needed. This is predictable, inevitable.

But that marketing requires some level of expected demand. if that demand is not there, it pays the monopoly copyright holder to simply sit on the film and wait for a shift upward in demand.

The public domain company has lower goals. Its demand threshold is lower than the Hollywood major studios. The public domain company can change less. And the public domain company needs to create a better product through packaging, information, and superior tape quality.

Therefore from a public domain distributor the viewing public generally pays less.

On the other hand the Hollywood major studios -- the monopoly holders -- have little incentive to offer value added and less incentive to even issue the product itself. Viewers can only see the film <u>when and if</u> the Hollywood monopoly copyright holder decides it is worth it to put the film out at all. This is predictable in classic monopoly price theory.

Economic theory tells us that the price to the public for

popular works should, through competition, decrease to the marginal cost of producing the work if there is no monopoly. If the work is under copyright, the marginal cost of production would include the royalty owing to the copyright owner. Otherwise the price is set to maximize profits to the (monopoly) copyright owner which is far higher than the marginal cost of production.

Sellers of public domain seek a specific market niche which offers far less profit than the Hollywood motion picture industry expects. It takes a far lower threshold of expected profit and so the work is more frequently issued.

This is certainly the case with public domain silent films which the Hollywood film industry has long seen as too small a profit item to even bother with issuing.

It is my experience that issuance by small public domain companies is the only way that certain motion picture works are ever placed out into the marketplace for the viewing public to even try.

But being widely available at affordable prices can also be the case for public domain talkies. Consider that now famous example of Frank Capra's Christmas delight IT'S A WONDERFUL LIFE. Here is a film which saw its copyright lapse on 6 February 1975 and then experienced an expansion of interest. Before a recent claim of underlying copyright, more than 100 companies vended IT'S A WONDERFUL LIFE on video, and it was widely shown on television, beginning from Thanksgiving through the entire Christmas season.

Indeed the motion picture, IT'S A WONDERFUL LIFE, has inspired

other works including a book based on its screenplay, issued in 1986. At the present time, IT'S A WONDERFUL LIFE, which few had seen until 1974, is a widely seen and has become a widely loved classic.

The public is surely far better off and interest in Frank Capra's career, languishing before 1974, took off and he benefitted from the renewed interest in his career, even as his copyright had lapsed.

There is also a significant quality associated with public domain offerings of video tapes not found in the offerings by the major Hollywood companies. Small suppliers can successfully release silent film titles in low volume, in part due to their low overhead, in part because they have to pay no royalties, and in part because they do not seek the quantities and levels of profit sought by the Hollywood major studios.

Most of these small public domain motion picture dealers compete on price as one might expect in any market. But since these public domain dealers offer a motion picture product to a select niche audience, they also seek to compete in terms of quality as well.

For example, Diamond Entertainment Corporation, which sells public domain films, silent and sound, offers original trailers (industry jargon for previews) along with the actual film title, and reproductions of lobby cards and posters. Its advertising heralds that its prints are from 35mm nitrate fine grain masters, not simply copies of bad copies. Indeed sometimes the tape is made

directly from the filmmaker's own personal copy. Diamond Entertainment Corporation's motto is revealing: "All videotapes are recorded on top grade videotape spooled into premium videocassette shells."

Another public domain company, The Bridgestone Group, advertises: "Carefully restored from mint 35mm prints."

One can buy a public domain movie on videotape simply based on low price (frequently under $10), but one can also access the best motion picture reproductions possible as well as ancillary materials to make the enjoyment and appreciation of the filmic experience that much more significant.

This is what competition within the public domain marketplace offers.

Contrast that with the market behavior of a title held exclusively by a Hollywood studio.

A monopoly copyright holder can tender quality, but there is no incentive to. What choice does the customer have?

The major Hollywood studio (with the only copy available) can compete on price, but why? The studio has an exclusivity.

And the major Hollywood studio -- with the monopoly right to exclusivity -- holds the ultimate power -- access. if the Hollywood company calculates that the costs of issuance (making copies, some marketing, and other small items) will not be exceeded by the possible revenues to generate adequate profits, then the exclusive copyright holder can simply withhold the film. No one can purchase it. No one can see it.

There is no such exclusivity within the vibrant marketplace for public domain films. There are now over 200 competing companies offering public domain motion pictures in various forms at various prices, usually low prices. Here competition based on price and quality -- with wide accessibility -- clearly benefits the public.

We can see the vivid contrast in that the major Hollywood studios themselves sometimes vend popular public domain titles. They continue to release public domain movies, even after these particular tiles fall into public domain.

Yet see the difference. Hollywood studios only release the big profitable titles. They pass on the smaller, less profitable titles. These latter works are only released by smaller companies.

The major studios do not release smaller titles because they make too little money to make it worth it for such big operations. Tiny companies have less overhead and can release public domain films with limited sales potential.

The Hollywood motion picture industry chooses not to commercially exploit all of the thousands of motion pictures in its vast libraries. Many languish because executives are convinced they will not make money. Extending the copyright term will not help.

And so in most cases these smaller public domain companies charge less. Rarely does the price of a public domain motion picture rise above $20 and is usually in the $10 range.

The major Hollywood studios -- in contrast -- charge more,

trying to make the naive customer believe she or he is getting "more for the money." In all but a handful of cases the customer is not getting more, but generally less.

Whereas the Hollywood major studio copyright holders rarely charge below $15, they often set prices above $30 and sometimes in excess of $50. A monopoly predictably restricts output and charges higher prices. Economic inefficiency rules. This is inevitable.

Here is an important irony. The proposed extension to the present copyright law simply increases the monopoly rights to the six major Hollywood studios. It will encourage higher prices and less issuance of past product. Thus on these two grounds the proposed extension offers no benefits for the moviegoing public.

Industry observers long have noted that public domain vendors think it is wonderful to sell a few hundred copies. It has been reported that a public domain company might sell less than 100 copies and be satisfied. For the major Hollywood studios the minimum cut-off certainly is in the thousands of sales, more often than not in sales measured in the millions.

In sum, maintaining the present copyright policy will mean that motion pictures can be widely disseminated at affordable prices.

If that is not enough, there are other positive effects as well. For example, due to the public domain status of Gaston's Leroux's 1910 novel, THE PHANTOM OF THE OPERA, frequently made into popular movies, some found in public domain catalogs, we have not one, but three stage musicals touring the United States.

Frank Capra's IT'S A WONDERFUL LIFE (1946), as noted above, a generation ago was yet another obscure, failed and forgotten motion picture. I know because when I worked at the Wisconsin Film Society in the early 1970s we struggled to gain a print to show as the final film of our series of first semester, as thoughts turned to Christmas. But once IT'S A WONDERFUL LIFE fell into public domain, millions of new fans have seen it and fallen in love with George and Mary Bailey. The discovery of IT'S A WONDERFUL LIFE would never have happened without its falling into public domain.

The proposal to extend the current term of 75-years to 95-years for motion pictures would have its greatest immediate impact on motion pictures copyrighted between the years 1918 and 1927, the so-called Golden Age of the silent cinema. As these come on line to enter into public domain, under current law, the public will gain access to the best films of the silent film era. The Hollywood film industry makes no money off such products, but as scholars learn more about them and write about silent cinema, the public will gradually begin to seek out and appreciate such works.

With all too few exceptions silent films are not shown in movie theaters or on television, principally they are seen in specialized archives. And there are precious few on home video -- outside the catalogs of the public domain vendors.

Sadly the survivors of that wonderful era languish on the shelves of the major studios, their copyright holders. The proposed extension will simply guarantee that the public will continue to be deprived of hundreds and hundreds of silent and

early sound films, long ago abandoned by their creators, but still protected by copyright.

Thousands of silent films await the freedom and access of public domain. It is one thing for a handful of scholars to exclusively see and evaluate and analyze silent films. It is quite another is it is difficult (if not impossible) to show these to students and the general public.

Sadly as silent films are perceived as of no value to modern Hollywood media conglomerates, they languish in often poor storage conditions, even outright neglect. Indeed with the past as prologue, the key reason we have but half of the silent films ever made even to survive is because of poor storage due to owner apathy.

The core of the proposed extension of the copyright term offers the major Hollywood studios what economists call option value. That is the silent films are worthless commercially today, but with technical change might not be so in the future.

The major Hollywood studios, burned by the innovation of home video, do not want to give up anything for the future. Who knows what the next technical change may bring? Maybe the public will want to see them in HDTV?

But those technical innovations are not here. The moviegoing public should not have to await their arrival, and then hope the major Hollywood studios are then willing to issue them.

The better public policy alternative is to have the current copyright law work and release silent films now!

In sum there seems no good argument for the proposed extension of the copyright term. Prices will stay high. Access will remain limited. And the possibility of no access will remain all too common.

Such a proposed extension will clearly not make the public better off, only an handful of Hollywood studios. And these major studios are the very large corporations which have all too often permitted the silent films which have survived to continue to languish in their vaults waiting for some far off day when they alone might commercially exploit them.

Indeed as we enter what many believe is a new world of 500 interactive cable television channels, we see the copyright holders trying to shore up their monopoly rights based on rights determined when such access was never even possible.

In contrast the owners and innovators of computer software and interactive video worry that any further restrictions to traditional copyright norms will stymie development of the new technologies.

The public through its Congressional representatives and President should herald the new world of access by rethinking traditional copyright schemes, not making the old system (with its term limits) ever more defining.

Hollywood's Concentrated Economic Power

The basis of the analysis above is the enormous concentrated power of the motion picture industry in the United States.

The current state and functioning of the motion picture industry in the United States sees power (and copyrights) held by six companies. They alone will be the beneficiaries of the proposed extension of the copyright term.

The $15 billion dollar consolidation of Time and Warner created renewed interest in the concentration of power and profit of the Hollywood studios as the motion picture industry in the United States entered the 1990s.

The current bidding war for Paramount, well past the $10 billion range, is, in part, dealing with the copyrights Paramount holds.

Also Japan's giant Matsushita Electric's takeover of MCA (and its Universal Studios) for nearly $10 billion taught us how much foreign corporations were willing to ante up for a place in the Hollywood motion picture industry juggernaut.

Many film fans look back to the 1930s and 1940s as the Golden Age of the movie business, but in fact the 1980s and 1990s stand as the era when the Hollywood industry --- as an industry -- achieved an international influence and mass entertainment marketplace power unparalleled in its history.

The Hollywood major studios continue on, proving to be among the most adaptable, agile, and durable of corporate entities.

Not only has the motion picture industry's basic structure

remained remarkably constant, so have Hollywood's fundamental operating tenets. Principles developed in the 1920s continue to be exploited: vertical control of and diversification into all forms of mass entertainment. Through ownership of the various outlets for movie exhibition (vertical integration), and through commercial exploitation of all possible spin-offs from a hit film (today including cable and home video), Hollywood studio corporations are able to retain and even expand their control while keeping all competitors at bay.

Although producers such as Spike Lee's corporate umbrella 40 Acres and a Mule, and Ray Stark's Rastar provide the legal means to make their pictures, they can only operate by distributing through one of the six major vertically integrated operations, the so-called majors:

Paramount Pictures

Time Warner's Warner Bros.

Matsushita's MCA/Universal

News, Inc.'s Twentieth Century Fox

Disney

Sony's Columbia Pictures

Only these six powerful corporations can market movies to theaters around the world as well as the full complement of video outlets.

And, because of their copyright hold on vast areas of American cinema, if these six do not release the film on video, it just will not be seen. It simply will not be accessible.

The six majors function as parts of a larger media conglomerates, embracing a varied line of entertainment businesses, selling both in the continental United States and throughout the world.

So, for example, Time Warner, parent owner of Warner Bros., stands as the quintessential media conglomerate. In 1989, Warner merged with Time to create the largest media company in the United States. Cable properties included Home Box Office, Cinemax, part ownership of Turner Broadcasting, and Black Entertainment Television, and control of the second largest multiple system operator (MSO) of cable franchises in the United States. Warner Home Video, and its magazines (including Time and Sports Illustrated) ranked as powers in their individual media industry sectors. The new Time Warner continues to be a significant producer of television series and a leading distributor of syndicated fare. Finally, Warner Bros. has counted a number of the top grossing motion pictures including the original Batman and its sequel, both of which had started as "properties" in Warner's DC Comics unit.

The six Hollywood media conglomerates possess a host of advantages that enable them to maintain their considerable economic power, keep out the competition, maintain high prices, and ever increase their profits.

Cross-Subsidization enables a Hollywood media conglomerate with interests in a number of media markets to take profits from a thriving area to prop up another less financially successful area.

Single line corporations do not have this luxury. Through the 1980s, for example, we saw a number of aspiring single line film studios, such as New World and Orion, falter.

So a Time Warner can originate a Batman comic book, turn it into a movie, create a popular song, and market figures and other toys based on its characters. Then the company can continue to control these products. No small company offering an alternative can compete. Hollywood gets more and more powerful. The public gets few choices.

Reciprocity enables movie media conglomerates to choose to whom they will sell and then only deal with those companies that cooperate with other units of the media conglomerate. For example, Universal might not sell movies to Viacom's Showtime or The Movie Channel's pay television services unless Viacom's cable franchises book Universal's USA Cable Channel.

This strikes at the heart of the issue of access. The Hollywood studios have many. many advantages in controlling their products. They do not need more from a proposed extension of the current copyright law.

In the end this leads Hollywood media conglomerates to integrate horizontally and vertically. All these six major Hollywood companies generate considerable profits from a wide spectrum of mass media enterprises, including theme parks (Matsushita's MCA, Time Warner, and Disney), recorded music (MCA, Sony's CBS Records, and Time Warner), publishing (Paramount, News, Inc., Time Warner, and Disney), and television production (all).

And make no mistake about it -- the major Hollywood companies will continue to be the big winners with this horizontal diversification.

Consider that Columbia, Paramount, Warners, Universal, Twentieth Century Fox, and Columbia all "instantly" became the major players in home video during the 1980s; they had the motion pictures people wanted to rent or buy. And so prices remain high as the major studios sit on titles they alone refuse to issue. There is no competition and the public is denied the right to see and appreciate the films of the past.

And the major Hollywood companies commercially exploited only their library's most valuable properties, not ones of marginal economic value which continue to languish on the shelf waiting some possible use in the new technologies of the future.

Just as these six powerful corporate giants alone can choose what to release, they also alone could withhold films they considered not commercially exploitable.

The major Hollywood studios enormous power centers on its skill at effective manipulation of the economic principles of price discrimination, demonstrating their vibrant monopoly power.

And this continued ability to price discriminate has enormous implications for copyright. As economists Stanley M. Besen and Leo J. Raskind have argued, "price discrimination allows producers to appropriate a larger share of the social benefits."

That is Hollywood makes more and more profits as the public sees some titles out of circulation and prices stay high. The

ability to successfully price discriminate makes Hollywood's copyrights valuable. Wall Street has long estimated that Hollywood's libraries are worth hundreds of millions of dollars. Part of this is the proper reward for taking risk. Part is simple excess monopoly power.

We can see this demonstrated in the long term behavior and profitability of the motion picture industry.

During the 1930s and 1940s, the Hollywood majors, through their ownership and control of production, distribution, and exhibition, set the prices for the movies shown and, through careful use of runs, zones, and clearances, were able to maximize revenues from box-office take. One paid more to see a motion picture in its first-run and then less down the line.

These studios then used their power to show a film and then withhold it from the market for years. In part they withhold because they re-use the property, remaking films (such as King Kong and Dick Tracy). To squeeze the most from remakes, the Hollywood studios invariably shelve the previous title.

The major Hollywood movie studios have long worked together to enforce a system of classic price discrimination. A generation ago the process was simple. Features opened with big premieres and publicity. Then they played off from first-run to second-run to third-run, so on down the line.

The coming of television simply added two runs at the end. A motion picture earned the bulk of its money from play in movie theaters; television, even with a sale for showing on one of the

three major television networks, accounted for less than one tenth of total revenues.

Feature films still begin their marketing life in theaters. As noted above, the first-run theater remains the principal "voting booth." If one can fashion a theatrical blockbuster during the crucial first weekend of release, then it should be possible to reap added millions from the home video and pay television arenas.

Even as recently as 10 years ago, movie theaters supplied more than three quarters of the revenue for an average Hollywood feature film. Today, theaters provide less than half.

Consider the extraordinary financial growth in the home video market. In 1980, the Hollywood majors collected about $20 million from world wide sales of video cassettes. In 1992 the figure stood at well in excess of $11 billion, or more than a 70 percent annual rate of growth.

Ten years ago an average motion picture expected to take in nothing extra from home video; today that "ancillary" revenue contribution usually amounts to one-third of the average total gross take.

Whatever additional new television technologies appear in the future, the business of the Hollywood major studios will continue to be to seek additional ways to maximum revenue. Starting with a theatrical showing, then home video, pay-cable, cable television, network television, local over-the-air television, and any other possible venues that come along in the forthcoming years, the object of this price discrimination will continue to be to get as

much revenue from a product as the various markets will permit.

But that does not mean all motion pictures will be commercially exploited. If the market is considered too small, then Hollywood sits the film down and awaits the possible commercial exploitation in the future. This robs current generations of seeing these works.

And this idling will not change. To this observer nothing seems on the horizon that might change that vice like grip.

Indeed, the takeovers of Columbia (by Sony), of MCA-Universal (by Matsushita), of Paramount (by either QVC or Viacom) only point out that it is far easier to buy into the Hollywood oligopoly than form a new company.

As we approach the twenty-first century, nothing looms on the horizon that will threaten the oligopolistic power of the major studios. The major Hollywood studios will continue to enjoy the fruits of their formidable economic power.

Their influence will keep reaching throughout the world, more powerfully than any other mass medium. The Hollywood oligopoly has learned to thrive in the age of more advanced technologies.

And thus they will continue to have little incentive to fully exploit their silent film copyrights and the current generation will rarely see "their" silent film classics. Prices will remain high and access limited.

Conclusions

In summary, the above analysis has argued that public domain films cost less for the viewing public, less than Hollywood monopoly held titles. Almost all public domain movie titles are offered my multiple vendors in contrast to Hollywood licensed films which have but a single supplier. In the broadcast and cable television marketplaces, there are more than 25 distributors offering public domain low cost motion picture programming for over-the-air television stations, public television, and the multitude of cable TV services. For Hollywood copyright works there is but a single supplier. Public domain videocassettes are significantly discounted from the licenses editions of the same works.

In short we see the classic effects of monopoly power: high prices, low quantity. We have inevitable poor results for the consumer while the monopoly rights holders ever prosper with the best of all exclusivity -- a legal monopoly!

The present system of a trade is working well. Economic analysis, as provided above, suggest the public would be better off continuing the current copyright term.

Qualifications

Douglas Gomery writes this short study -- on these vital and important issues -- as a media economist and as one with a knowledge of the film and television businesses.

Douglas Gomery has a B.S. and M.A. in economics from Lehigh University [1967] and the University of Wisconsin [1970], respectably. Gomery earned a Ph. D. in communications, with a minor in economics, also from the University of Wisconsin [1975].

Douglas Gomery has published nine books and more than 300 articles on the economics and history of the mass media, including motion pictures and television. His work has been published by St. Martin's Press, Alfred A. Knopf, Dutton, Pantheon, Oxford University Press, The Johns Hopkins University Press, the University of California Press, the University of Wisconsin Press, the University of Chicago Press, and the Columbia University Press, among others.

Douglas Gomery's achievements are listed in the current editions of Who's Who in the East and Who's Who in Entertainment.

A summary VITAE for Douglas Gomery is attached below. A full and complete resume (running more than 30 pages) will be supplied upon request.

u8

Bibliography

A number of works were consulted in the preparation of this report, other than those mentioned directly in the text above. They include:

Besen, Stanley and Leo J. Raskind, "An Introduction to the Law and Economics of Intellectual Property," The Journal of Economic Perspectives, Volume 5, Number 1 (Winter, 1991), pages 3-28.

Carlton, Dennis W. and Jeffrey M. Perloff, Modern Industrial organization (New York: HarperCollins, 1990).

Elias, Stephen R., NOLO's Intellectual Property Law Dictionary (San Francisco: Nolo Press, 1985).

Glassman, Don, Writers' & Artists' Rights (Washington, D.C.: Writers Press, 1978).

Goldfarb, Ronald L. and Gail E. Ross, The Writer's Lawyer (New York: Times Books, 1989).

Goldstein, Paul, "Copyright," Law and Contemporary Problems, Volume 55, Number 2 (Spring, 1992), pages 79-91.

Gomery, Douglas, The Hollywood Studio System (New York: St. Martin's, 1985).

Gomery, Douglas, "Media Economics: Terms of Analysis," Critical Studies in Mass Communication, Volume 6, Number 1 (1989), pages 43-60.

Gomery, Douglas, Shared Pleasures (Madison: University of Wisconsin Press, 1992).

Johnson, Donald F., Copyright Handbook, Second Edition (New York: R. R. Bowker, 1982).

Karp, Irwin, "The Copyright Renewal Trap," Film Comment, January-February, 1990, pages 12-15.

Lange, David, "At Play in the Fields of the Word: Copyright and the Construction of Authorship in the Post-Literate Millennium," Law and Contemporary Problems, Volume 55, Number 2 (Spring, 1992), pages 139-151.

Litman, Jessica, "Copyright Legislation and Technological Change," Oregon Law Review, Volume 88, Number 2 (1989), pages 275-361.

Patterson, L. Ray, Copyright in Historical Perspective (Nashville: Vanderbilt University Press, 1968).

Patterson, L. Ray and Stanley W. Lindberg, The Nature of Copyright (Athens: University of Georgia Press, 1991).

Strong, William S., The Copyright Book (Cambridge: MIT Press, 1993).

Douglas Gomery's VITAE

Douglas Gomery (Ph. D. Wisconsin, 1975) is currently a Full Professor at the University of Maryland teaching courses in media economics and media history. His other university teaching experience includes courses offered at the University of Utrecht in the Netherlands, the University of Iowa, Northwestern University, and the University of Wisconsin, both in Madison and Milwaukee.

From 1988 through 1992 Gomery was Senior Researcher at the Media Studies Project of the Woodrow Wilson International Center for Scholars.

Douglas Gomery has served on the Board of the American Film Institute as well as film advisory boards for the National Gallery of Art and American Film Institute Catalog.

Douglas Gomery's books include:

The Future of News (Baltimore: The Johns Hopkins University Press, 1992) (with Philip Cook and Lawrence W. Lichty).

Shared Pleasures (Madison: University of Wisconsin Press, 1992).

Movie History: A Survey (Belmont, California: Wadsworth Publishing Company, 1991).

The Art of Moving Shadows (Washington, D.C.: National Gallery of Art, 1989) (with Annette Michelson and Patrick Loughney).

American Media: The Wilson Quarterly Reader (Baltimore: The Johns Hopkins University Press, 1989) (with Philip Cook and Lawrence W. Lichty).

The Will Hays Papers (Frederick, Maryland: University Publications of America, 1987).

The Hollywood Studio System (New York: St. Martin's, 1986); translations in French and Spanish.

Film History: Theory and Practice (New York: Alfred A. Knopf, 1985) (with Robert C. Allen).

High Sierra: Screenplay and Analysis (Madison: University of Wisconsin Press, 1979).

Moreover, Douglas Gomery has published more than 300 articles

in anthologies and leading journals. Gomery's writing also includes pieces for Modern Maturity and the Village Voice as well as the SMPTE Journal, Film Quarterly, Cinema Journal, and Journal of Broadcasting. Douglas Gomery's scholarly works and writings have been translated into a half dozen languages.

"Preservation Without Access is Pointless"

Statement by

The Committee For Film Preservation and Public Access

before

The National Film Preservation Board of the Library of Congress

Los Angeles, California

February 12, 1993

This statement is submitted on behalf of The Committee For Film Preservation and Public Access. Our members include motion picture screenwriters, directors, producers, distributors, historians and journalists. A full membership list is attached.[1]

Summary

The National Film Preservation Act of 1992 directed the Librarian of Congress in consultation with the National Film Preservation Board of the Library of Congress to conduct a study on the current state of motion picture preservation and restoration in the United States.[2]

Our position is simple. We strongly support the creation of a national policy to preserve our motion picture heritage. At the same time, that program will be incomplete -- utterly pointless -- unless there is a guarantee of access to the films that are being preserved at public expense.

We believe that all films have historical significance and should be preserved, and we support the use of Federal funds for this effort. However, we also believe that with the use of public funds comes the responsibility to make the films available to the public. Upon expiration of copyright, those films whose preservation, cataloguing or storage has been supported in any way by public funds must become available without restriction.

Preservation is great, but preservation without access is pointless.

Most films of significant commercial value are preserved by their owners and one or more film archives. If Federal funds are to support preservation of classics such as DRACULA, MR. SMITH GOES TO WASHINGTON, CITIZEN KANE or CASABLANCA, already preserved by their copyright holders, then there must be a compelling public benefit.

---

1 See Appendix 1.

2 Public Law 102-307, the National Film Preservation Act of 1992, 106 Stat. 264, Section 203. See also: "Request for Information and Notice of Hearing," *Federal Register*, Vol. 57, No. 229, November 27, 1992, pp. 56381-3.

Similarly, if archives use public funds to preserve films that the owners decline to preserve themselves, then there must be a process to make these films available to the public.

Introduction

Motion pictures are one of the common elements of the American experience in the Twentieth Century. Produced solely for profit, with little thought to their long-term significance, the importance of the cultural contribution of the commercial cinema was recognized just in time. Beginning in the 1960s, thousands of motion pictures were saved from loss through destruction or neglect. A combination of public, institutional and private interests worked together in this effort. They assured that many of the movies that shaped the Twentieth Century would survive for enjoyment, review and study.

Now, twenty-five years after these efforts recovered films not seen since their original release, it is time for review. When our entire motion picture heritage was at risk, it was sufficient to acquire and store the missing years of American cinema. We believe that Federal funding was appropriate for this effort.

However, the government has an obligation to the taxpayers to require access to motion pictures in the public domain if those motion pictures were preserved at taxpayer expense. **Public domain is meaningless without access.** If a book falls into the public domain, then any publisher can buy an old copy and reprint it. Films are different. Motion pictures are rented, not sold, and access to high quality materials is necessary for additional copies. One of the primary rationales for public support of film preservation should be to assure future wide availability when a motion picture falls into the public domain.

Why is Federal Funding Involved?

There are five American film archives which are full members of FIAF, the International Federation of Film Archives: the International Museum of Photography at George Eastman House, the Library of Congress, the Museum of Modern Art, the

National Center for Film and Video Preservation at the American Film Institute, and the UCLA Film and Television Archive. With the National Archives, they constitute the largest archives of moving image material in the United States. There are several dozen smaller noncommercial institutions.[3]

The Library of Congress and the National Archives are Federal institutions and receive significant direct Federal appropriations for film preservation activities. In addition, Federal grants for private institutions are funded through the National Endowment for the Arts. From 1973 to date, the Endowment has awarded over $13,000,000 toward film and video preservation activities.[4]

Regardless of the amount of Federal support involved, we believe that use of public funds for film preservation, cataloging or storage results in certain obligations.[5] These include informing the public of what films are at each archive, and establishing procedures to make those films widely available to the public after expiration of copyright.

Starting in the 1960s, most of the major studios donated their nitrate negative and master material to various American film archives. In widespread use before 1951 for

---

[3] Addresses and telephone numbers for 56 additional major U.S. noncommercial film archives are listed in Anthony Slide, *Nitrate Won't Wait*, (Jefferson, NC: McFarland & Company, Inc.,1992), pp. 168-171.

[4] Telephone conversation with Laura Welsh, National Endowment for the Arts, January 13, 1993.

[5] The cost to taxpayers of various U.S. film preservation efforts may not be precisely calculable, but it is clearly significant. Direct government expenditures include the cost of the Library of Congress and National Archives film preservation programs since their inception, which clearly runs into the millions of dollars. In addition, the National Endowment for the Arts has given private archives film preservation grants for millions of dollars more.

Indirect costs to taxpayers include the tax-exempt status of private archives, the tax deductability of financial contributions given to these archives and, until the tax law was changed, the tax deductability of film donations made to the Library of Congress and private archives. These costs to taxpayers will clearly continue to mount as the number of films preserved, catalogued and stored by archives grows with each succeeding year.

negatives and prints, nitrate film stock is highly flammable and will eventually decompose. Long-term existence of these motion pictures requires copying them to safety film, and the preservation of a large number of titles is expensive. At that time, only M-G-M and Disney had made the investment to copy their entire film libraries, believing the films had long-term value.[6] By the early 1970s, the commercial market for black-and-white films had dried up, as television demanded color programming. The other studios had only battered 35mm and 16mm negatives, made quickly in the 1950s for television use.

By donating their nitrate negatives and master material to government archives or private institutions receiving Federal funding, the studios relieved themselves of huge ongoing expenses for storage, inspection, insurance and disposal. A 1986 survey documented 200,000,000 feet of nitrate film held in non-commercial archives, a significant portion donated by corporate concerns.[7]

The agreements that limit use of the donated materials were scrutinized three years ago when the United States Court of Appeals for the Federal Circuit disallowed a $8,394,000 charitable contribution claimed in 1969 by insurance conglomerate Transamerica Corporation.[8] Its United Artists subsidiary had donated its entire collection of nitrate film elements to the government. This included over 1000 features and 2000 shorts and cartoons, primarily films produced by Warner Bros. and Monogram. While this included such classics as THE MALTESE FALCON, most of the films were the caliber of MOONLIGHT ON THE PRAIRIE with Dick Foran.

---

6 M-G-M spent $30,000,000 toward the financial cost of preserving its film library in conjunction with the International Museum of Photography at George Eastman House. Slide, *Nitrate Won't Wait*, p. 156.

7 Stephen Gong, "National Film and Video Storage Survey Report and Results," *Film History*, Vol. 1, No. 2, 1987, p. 127. The study notes that "almost one-half of the more than 200 million feet of nitrate film being held in archives remains uncopied."

8 Transamerica Corporation v. United States, 902 F2d 1540 (Fed. Cir. 1990). The determination of the value claimed is given in Transamerica Corporation v. United States, 15 Cl.Ct. 420, 459 (1988).

The Court of Appeals saw no charity on the part of United Artists. Rather than ruling on the value of the gift to the government, the Court declared that the donation had no fair market value at all. "**The cost of the conversion to safety film which the Library undertook to make was well over $1 million,**" the Court noted. The donor "**contributed nothing towards this cost, although it received the right, to the exclusion of other members of the public, to obtain access to the Library's safety film for commercial purposes in perpetuity.**"[9] Any use of the films before or after expiration of the copyrights requires the permission of United Artists, or its successor.

All of the written agreements between the studios and the Library of Congress have these perpetual restrictions; other archives have similar arrangements with equally restrictive terms.[10]

The public policy considerations involved in the *Transamerica* case are equally relevant here. Film studios should not be able to obtain benefit from taxpayer expenditures unless the public gains eventual access. The Court of Appeals noted that the only public benefit gained was "the right to make preservation copies of the nitrate negatives. This benefit brought with it substantial expense."[11] We believe that this benefit is insufficient.

A number of the films included in the United Artists donation are already in the public domain, and remain completely unavailable more than twenty years after the film material became the physical property of the United States. For example, FROM THE MANGER TO THE CROSS (1912), filmed by the Kalem company on location in the Middle East, was one of the first American feature-length films. The donated material is the best surviving print of this title. In the public domain for over fifty years, this feature

---

9 902 F2d at 1543 (emphasis added).

10 See Appendix 2 for the Instrument of Gift for the United Artists collection.

11 902 F2d at 1543.

can still only be shown with the permission of the donor, which has announced no interest in making the film available commercially.

Also in the United Artists collection are many familiar public domain titles, including SANTE FE TRAIL (1940) with Errol Flynn and Ronald Reagan, and ALGIERS (1938) with Charles Boyer and Hedy Lamarr. Widely available in inferior copies, the best material is being preserved at public expense, but not for the public benefit.

At all archives, many films are preserved, stored or catalogued with Federal funds and no financial support from the copyright owner. Not only do the studios have exclusive access to the preservation material, but they receive all income from its exploitation. This is especially vexing when preservation materials are used to provide excerpts for documentaries or commercials. As noted in Anthony Slide's study of film preservation, *Nitrate Won't Wait*, "once the film has been preserved at public expense, the preservation elements are made available to the copyright owner, without charge, for his or its financial benefit.... Such copyright owners charge as much as $2,000 or $3,000 for use of the clips."[12] The copyright holder gets 100% of the fees for materials provided by the archive and preserved, catalogued and stored at public expense.

More than twenty years ago, when the major studios deposited their nitrate materials, there was some chance the films might have ended up rotting in the vaults. Black-and-white films of the 1930s and 1940s had reached the nadir of their commercial value. However, several factors have caused a huge increase in their worth. The increased number of UHF television stations and cable networks, many owned by the studios, share a thirst for programming. Perhaps the greatest influence has come from the VCR revolution, which has seen the release of the most popular classics for home viewing.

---

12 Slide, *Nitrate Won't Wait*, p. 150.

Preserved, Only to Vanish?

Now that the classic films have returned from their *Late, Late Show* oblivion to wider availability, how will they fare once they fall into the public domain? The copyright owners have shown every indication that once the 75-year copyright terms expire, they will prepare revised versions that qualify for new copyrights, **and the originals will be withdrawn from circulation.**

This is not idle speculation. One of the promised "benefits" of colorization is to artificially extend the copyright term.[13] For many films already in the public domain, distributors have prepared new versions with different music tracks, editing and content, and copyrighted the results as "new editions."

Indeed, the Walt Disney Company has announced plans to permanently withdraw FANTASIA (1940) in favor of a new version, with some new footage. This new version will qualify for a new and separate copyright and the original version of FANTASIA will disappear and be forever unavailable, even after the original falls into the public domain.[14]

In short, as their oldest films complete their 75-year term of copyright protection, the studios have considerable incentive to create new versions. Public domain is not going to lead to the widespread availability of the great films. Instead, it will be the cause of the disappearance of these motion pictures in their original versions.

Rather than have the most authentic versions disappear, we believe that when a film falls into the public domain, it should result in a renaissance. Just as audiences of the 1920s and 1930s awaited the release of the films when they were new, the 1990s and 2000s should see those films emerging from a long hibernation to become available again. The purpose of film archives is to assure that top quality copies of those films

---

[13] See Appendix 3.

[14] See Appendix 4.

survive in their original versions to be seen by future audiences. To allow otherwise is to nullify the entire investment in film preservation.

Public Policy

The purpose of the copyright law is to provide limited protection for a finite term to give creators incentive to create works. At the end of the term of protection, the works fall into the public domain for the widest possible dissemination. The United States Constitution grants Congress the power "to promote the progress of science and useful arts by securing for *limited times* to authors and inventors the exclusive right to their respective writings and discoveries."[15]

The U.S. Supreme Court addressed this constitutional policy in *Twentieth Century Music Corporation v. Aiken*:

> The limited scope of the copyright holder's statutory monopoly, like the limited copyright term required by the Constitution, reflects a balance of competing claims upon the public interest: Creative work is to be encouraged and rewarded, but private motivation must ultimately serve the cause of promoting broad public availability of literature, music, and the other arts.[16]

We believe that restricting access to works in the public domain which are preserved with public funds is contrary to the guiding public policy articulated by the Constitution and the Supreme Court, and contrary to common sense. We do not believe that preservation for the sake of preservation serves the public. If the films are being preserved for posterity, when does posterity begin?

---

15 United States Constitution, Article 1, section 8, clause 3 (emphasis added).

16 Twentieth Century Music Corporation v. Aiken, 422 U.S. 151, 156 (1975). To reinforce the point, the Court continues, quoting an earlier Supreme Court case, "The sole interest of the United States and the primary object in conferring the monopoly lie in the general benefits derived by the public from the labors of authors." Fox Film Corp. v. Doyal, 286 U.S. 123, 127 (1932). See also: Sony Corp. v. Universal City Studios, Inc., 464 U.S. 417, 429 (1984): "It is intended to motivate the creative activity of authors and inventors by the provision of special reward, and to allow the public access to the products of their genius after the limited period of exclusive control has expired."

Model Arrangements

The government should not allow perpetual restrictions on access to films being preserved at public expense. To demonstrate that this does not have to be the case, there are several arrangements that should act as models for accessibility of preserved materials.

The Universal Pictures Newsreel library was donated to the National Archives in 1970. This included both nitrate and safety film. Four years later, Universal removed all restrictions on use, effectively abandoning its copyrights.[17]

As a result, the Universal Newsreels are the most widely used historical footage in this country, appearing in a wide variety of documentary, feature and educational productions. Preserved at public expense, and available to anyone on a "cost plus" basis from the National Archives, the films are providing great benefit to the public.[18]

The Hearst Metrotone News library was donated to the UCLA Film and Television Archive in 1981. This grant included all film materials and the copyrights, now administered by the Regents of the University of California. This has allowed UCLA Commercial Services to use income from sales of footage from the films to support preservation of the newsreel collection.[19]

Many archival agreements for donations of films by private collectors or independent producers and distributors provided for limited-term restrictions of 10 to 35 years. Since some of these agreements were made as long as twenty years ago, that means that access to these films is in sight.

---

17 U.S., Congress, House, *National Archives and Records Service Film-Vault Fire at Suitland, MD. Hearings Before a Subcommittee of the Committee on Goverment Operations*, 96th Congress, First Session, June 19 and 21, 1979, Appendix 4.

18 For example, Turner Network Television's KATHARINE HEPBURN: "ALL ABOUT ME," cablecast on January 18, 1993, included Universal Newsreel footage to show the actual hurricane that once destroyed a Hepburn family home.

19 Slide, *Nitrate Won't Wait*, p. 31.

We believe that agreements such as those discussed above offer a balance of benefit to the donor and the public. Films being preserved with public funds become widely available. **Immediate or eventual availability should be a requirement of all Federal funding for film preservation.**

Please remember that the underlying issue is availability. While the titles that immediately come to mind are the familiar classics, the eight major Hollywood studios released a new picture nearly every week for 35 years, and most of these titles vanished from sight soon after their original release. These include westerns, films without recognizable stars, pictures based on topical events or radio programs, or any film that reflects dated values. In addition, there were thousands and thousands of live action short films.

Produced on small budgets, these motion pictures have very little commercial value now, and will never be released on video or to television by their owners. The major home video labels have overhead expenses that result in minimum sales requirements for each title. These films are not commercially viable under those conditions. However, they are of enormous historical and sociological importance, and have much to offer about the people who made them and the times during which they were produced. Independent distributors with lower expenses, and lower expectations, can make these titles available to the audiences that await them. Under the present restrictions, these less known films that are unavailable now will remain unavailable even after they fall into the public domain.

We believe that the removal of restrictions will not result in significant competition for the classic films. If Turner Entertainment continues to make the original KING KONG widely available, then when that film falls into the public domain in 2009, there will be a very limited commercial market for copies from other sources. Few public domain video distributors will focus their resources on competing with a low-priced home video release from the original distributor.

Films That Might as Well Be Lost

A review of the films of Gary Cooper will spotlight many of the effects of the current situation. Featuring one of Hollywood's greatest stars, a number of Gary Cooper films are in a legal limbo, being preserved by American archives at public expense, but unavailable to the public.

Gary Cooper started his career in silent films. CHILDREN OF DIVORCE (1927), with Clara Bow, is one of hundreds of silent films preserved, yet never to be seen. One of Cooper's first sound films, THE SPOILERS (1930), was never on television due to a rights problem with the story by Rex Beach. Although the story has been in the public domain for over 10 years, Paramount has not distributed the film, nor can anyone else when Paramount's motion picture copyright expires.[20]

A FAREWELL TO ARMS (1932) is a public domain staple and widely available. Based on the novel by Ernest Hemingway, it stars Gary Cooper and Helen Hayes, yet the copies in distribution are of the edited 1938 and 1949 reissue prints. The 35mm print donated by Paramount is the original release version; preserved at public expense, but rarely, if ever, shown to the public.

Based on a Broadway play, 1933's ONE SUNDAY AFTERNOON is carefully evocative of small town life of 1910, recreating that period only 25 years later. This low-key comedy represented a career shift for Cooper in a role played far differently by James Cagney in the 1941 remake. Preserved with public funds, ONE SUNDAY AFTERNOON is in the public domain, yet it is virtually never shown.

Paramount Pictures donated beautiful prints of these four films to the Library of Congress in 1971.[21] Although Paramount sold its rights to A FAREWELL TO ARMS and ONE SUNDAY AFTERNOON over 45 years ago, the archive is required by written

---

[20] THE SPOILERS was not included in Paramount's sale of their film library to MCA in 1958, so it is still owned by Paramount.

[21] *Nitrate Won't Wait*, p. 161.

agreement to get Paramount's approval for access. The studio refuses to allow access to films like these by specialized distributors, nor will Paramount distribute these titles.

The Library of Congress has devoted substantial Federal resources preserving Frank Capra's MEET JOHN DOE (1941), starring Gary Cooper and Barbara Stanwyck. This public domain title is widely available in poor-quality, usually incomplete copies. However, restored to full length, the best quality edition stays in the vault, while the truly inferior material is widely available.

The most successful film of 1943 was Cooper's second Hemingway adaptation, FOR WHOM THE BELL TOLLS, co-starring Ingrid Bergman. Released at 170 minutes, but long available only in a version 40 minutes shorter, the UCLA Film and Television Archive restored the film to 157 minutes using funding from the David and Lucille Packard Foundation.[22] Despite this effort, the owner has not released the restored version on home video.

One of the biggest hits of 1946 was SARATOGA TRUNK. Again casting Gary Cooper and Ingrid Bergman, this film has been unseen since the 1950s, due a limited license to the story by Edna Ferber. This is a prime example of the type of film that archives should preserve, since there is no economic incentive for the copyright holder to do so. However the public will receive no benefit for warehousing the film until the story rights fall into the public domain, and the owner of the film can again distribute this long missing classic.

Gary Cooper is one of the great film stars in the history of American cinema, yet seven of his major films are currently unavailable to the public in their original or restored form. At the same time, all are being preserved by archives that receive Federal funds.

---

22 *Archival Treasures: Film, Television & Radio Preservation at UCLA*, 1985, p. 27.

The problem goes far beyond this sample of Gary Cooper films. The following list is representative of the problems of availability and access to films being preserved with public funds:

- The silent W.C. Fields features that were prototypes for his classic sound comedies.
- The Spanish-language films of Laurel and Hardy where they speak Spanish phonetically, and perform routines cut from the English language versions.
- The Vitaphone shorts of the early sound period, which record vaudeville acts and opera performances of the 1920s. They provide indispensable insight into the live stage shows that the sound film brought to an end.
- Fox Film Corp. -- the forgotten studio -- produced 50 films a year from 1914 to 1935, when it became Twentieth Century-Fox, ending a distinctive style of filmmaking. The films produced by this company were rediscovered in the early 1970s. Except for those films starring Will Rogers or Shirley Temple, they are only rarely shown. Their owner has shown no interest in the films, except to grant permission for occasional public showings.[23]
- The 1200 features and 600 shorts from Columbia Pictures from the nitrate era. Remembered as a B-picture studio, Columbia bought up many other libraries for television distribution. The Universal serials and feature films from Pathe, Tiffany, Mascot, and other companies were purchased by Columbia. Out of distribution by Columbia for thirty years, many of these titles are already in the public domain. Being preserved with Federal funds, these are orphan films.
- 91 Paramount feature films from 1914 to 1943, including many unique prints of silent features. Paramount was the number one studio until the coming of sound, yet only a fraction of their films before 1928 survive in any form. The studio's productions from that era have virtually no critical reputation, while the M-G-M titles, preserved and made available by their owner, have set the current critical standard for the Hollywood silent film.
- The 740 features produced by RKO Radio Pictures on nitrate film. These titles were released to television in the 1950s in poor quality copies, with the distinctive RKO tower logo removed. More significantly, the sharp photographic style of the studio was replaced with fuzzy, indistinct images. While copyright owner Turner Entertainment has produced new film and video masters of outstanding quality, when the films fall into the public domain, Turner and the archives will control all of the good quality prints.[24]

---

23 William K. Everson, "Film Treasure Trove: The Film Preservation Program at 20th Century-Fox," *Films in Review*, December 1974, pp. 595-610.

- Each of the 806 sound features, 54 silent features, 1507 shorts and 337 cartoons produced by Warner Bros. surviving from the nitrate era. The reputation of the studio stands on perhaps ten percent of its productions in the thirties and forties. The rest still sit on the shelf. One of those, THE DARK HORSE (1932), is described by Leonard Maltin as "just one of scads of worthwhile, yet unseen Warner Bros. movies from the early 30's" that is not on home video.[25]

These are some of an endless list of examples of films being preserved by American archives, which will never be available to the public under current agreements. The owners have limited their interest to the few films that promise significant returns. Given the considerable amounts of Federal funding supporting the preservation effort, we believe that the purpose of this preservation should be to assure that all of these films will be available to the public - now, if the owners have interest, and to everyone when they pass into the public domain.

Our Proposal

Subject to further discussion and refinement, our proposal is along the following lines:

While we support preservation, we believe that preservation without eventual access is pointless. Availability for private viewing and occasional public shows is nice, but this does not provide sufficient benefit for the funds expended.

Preservation of films for the sole and exclusive benefit of the donor should be contrary to public policy.

All public funding of film preservation should be contingent on eventual public access to the preserved films. Public access should include the availability of first quality prints and video masters on a "cost plus" or reasonable fixed-fee basis. Revenues

---

24 All of these feature collections are recounted in *The American Film Institute Report 1967/71*, pp. 8-19.

25 Leonard Maltin, "Leonard Maltin's Wish List," *Premiere*, February 1993, p. 90.

generated should be plowed back into film preservation efforts to reduce the need for Federal funding.

There is little point in preserving a film to the highest archival and quality standards if the commercially available copies will be of substandard quality. Policies for access and fees should be released for public comment.

The film archives have provided free storage and free preservation for the studios using public money. Congress should pass clarifying legislation that limits protection of donated works preserved, stored or catalogued with Federal funds to the copyright term. or 20 years after the gift, whichever is longer. This provides sufficient benefit to the donor, while providing reasonable access to the public.

All archives that receive Federal funds should prepare lists of their holdings with availability dates. Procedures for suitable protection of the original materials should be released for public comment.

Conclusion

Just as a falling tree makes no sound if no one is around to hear it, preserving a film makes no sense if no one is allowed to see it.

Any recommendations made to Congress as a result of this proceeding must therefore deal not only with the preservation of films, but also with the question of guaranteeing public access to those films.

Our committee would be delighted to work closely with the National Film Preservation Board of the Library of Congress in developing recommendations for a comprehensive program that provides for preservation and public access.

Respectfully submitted,

THE COMMITTEE FOR FILM PRESERVATION AND PUBLIC ACCESS

The Committee For Film Preservation and Public Access

- JOE DANTE is a major motion picture director and producer. His films include THE TWILIGHT ZONE- THE MOVIE, GREMLINS, INNERSPACE and MATINEE. Mr. Dante is also a journalist, a member of the Directors Guild of America, and a member of Screen Actors Guild.

- WILLIAM K. EVERSON is the leading film historian. Professor Everson is the author of numerous books including *American Silent Film, The Films of Laurel and Hardy, A Pictorial History of the Western Film, and The Detective in Film.* He is Professor of Cinema, New York University, archival consultant, journalist, film critic, lecturer, and winner of Best Film Book Award at the Venice Film festival for *The Western.*

- ROBERT A. HARRIS is a film archivist/producer. He was responsible for the 1981 American release of Kevin Brownlow's restoration of Abel Gance's NAPOLEON, in concert with Zoetrope Studios. Active in film restoration and preservation, Mr. Harris reconstructed and restored David Lean's LAWRENCE OF ARABIA for Columbia Pictures in 1989, and Stanley Kubrick's SPARTACUS for Universal/MCA in 1991. With Martin Scorsese, Mr. Harris also produced THE GRIFTERS (1990).

- ED HULSE is a journalist (founding editor of *Previews* magazine and contributing editor to *Video Review*), film historian, and author of *The Films of Betty Grable* and co-editor of *Leonard Maltin's Movie Encyclopedia*. His articles have also appeared in *Variety*, *Millimeter*, and *The New York Times*. A lecturer at the New School for Social Research and the American Museum of the Moving Image, Mr. Hulse is chairman of the annual Cinecon, the largest west coast festival of classic Hollywood films.

- RICHARD T. JAMESON is Editor of *Film Comment* magazine. He is an author and a member of the National Society of Film Critics. He was Film Lecturer in Cinema Studies at the University of Washington from 1969-1980.

- G. WILLIAM JONES, Ph.D. Founder, archival director, and professor of Cinema at Southwest Film Archives at Southern Methodist University, Dallas. Mr. Jones is author of *Talking with Ingmar Bergman* and *Black Cinema Treasures: Lost and Found.* Director and producer of the award winning film, *That's Black Entertainment.* Founding member of the Texas Film Commission, Mr. Jones was a member of the President's Commission on Obscenity and Pornography from 1969-1971, as a member of the EFFECTS RESEARCH PANEL.

- ROBERT KING is Editor and General Manager of *Classic Images* magazine. He is an author, journalist and film historian.

- TIMOTHY LUCAS is a journalist. Editor and publisher of *Video Watchdog* magazine, Mr. Lucas is a novelist, film historian, and film critic.

- GREGORY LUCE is a film historian and archivist, and the owner of several copyrighted motion pictures. A theater owner in Oregon, Mr. Luce is also a distributor of motion pictures to home video, television, cable and stock footage markets. He is a former radio and television on-air personality.

- LEONARD MALTIN is a television personality (seen weekly on the nationally syndicated ENTERTAINMENT TONIGHT as film correspondent, historian, and critic), author (*Leonard Maltin's TV Movies & Video Guide, Of Mice and Magic, Movie Comedy Teams, The Real Stars, The Disney Story*), journalist (articles appearing in *The New York Times, Smithsonian, T.V. Guide*, etc.), actor and video producer.

- STEVEN NEWMARK is owner and president of Image Works Inc. Mr. Newmark is a film archivist, television and video distributor, and stock footage distributor.

- L. RAY PATTERSON is a copyright scholar, Pope Brock Professor of Law, University of Georgia School of Law. Mr. Patterson is an author whose works include *Copyright in Historical Perspective, The Nature of Copyright*, plus many articles on copyright. He is a member of The American Law Institute.

- SAMUEL A. PEEPLES is an author (works include THE MAN WHO DIED TWICE), screenwriter (the original Star Trek pilot WHERE NO MAN HAS GONE BEFORE, LANCER television series, dozens of others), motion picture and television producer (films include WALKING TALL, ADVANCE TO THE REAR), journalist and former monthly column writer for *Films In Review*, and a retired member of the Writers Guild of America, West, Inc.

- DAVID PIERCE is a copyright consultant and writer. Mr. Pierce is the author of *Motion Picture Copyrights & Renewals: 1950-1959*, and his articles on film history have appeared in *American Film* and *American Cinematographer*. He also produces the laserdisc release of classic films. Mr. Pierce is co-producer of *The Age of Exploration*, a series of eight silent feature films. The series was selected by *Video Magazine* as one of the top ten video programs of 1992.

- FRED OLEN RAY is an independent motion picture director and producer. His films include MOON IN SCORPIO, ARMED RESPONSE, CYCLONE, and COMMANDO SQUAD. He is president of American Independent Productions, Inc., a motion picture distributor. Mr. Ray is also a screenwriter, poet, journalist, film historian, actor, and member of Screen Actors Guild. He is a former member of the Florida Motion Picture and Television Association.

- MICHAEL V. ROTELLO is an Illinois State Representative from the 67th District. Mr. Rotello served as chairman of the Legislative and Community Development Committees. Former Rockford, Illinois, City Councilman. County auditor, Winnebago County, Illinois, 1984-1990. Delegate, 1976, 1980 and 1992 National Democratic Conventions. Mr. Rotello is an active member of the Knights of Columbus.

- BONNIE ROWAN is the author of the upcoming *Scholar's Guide to Washington, D.C. Media Collections*, published by Johns Hopkins University Press. Ms. Rowan is a founder of the Washington Archive Research Council, which supports greater access to public collections. As a researcher, Ms. Rowan has worked on numerous documentaries, including *Marion Anderson* for WETA. She taught film history at Towson State University for seven years.

- ANTHONY SLIDE has authored or edited more than 40 books on motion pictures and popular entertainment. He was associate archivist at the American Film Institute and the first resident film historian of the Academy of Motion Picture Arts and Sciences. In 1990, Mr. Slide received an honorary Doctorate of Letters from Bowling Green University. At that time, Lillian Gish called him "the preeminent historian of the silent film."

- GEORGE TURNER is the former editor of *American Cinematographer* and the magazine's historical consultant. He is the author of *The Making of King Kong* (with Orville Goldner), *Forgotten Horrors* (with Michael H. Price), and the editor of *The Cinema of Adventure, Romance & Terror*, and *The A.S.C. Treasury of Visual Effects*. He works in the film and television industries as a production illustrator and special effects artist.

- BILL WARREN is an author whose works include *Keep Watching the Skies*, volumes one and two. Mr. Warren is also a film historian, journalist, and a Contributing Research Editor for *Leonard Maltin's TV Movies & Video Guide*.

- MATTHEW WEISMAN is a screenwriter, motion picture producer and Adjunct Associate Professor at The University of Southern California School of Cinema. He is also a member of The Writers Guild of America.

INSTRUMENT OF GIFT

United Artists Corporation (hereinafter: "Donor"), hereby gives, grants, conveys title in and sets over to the United States of America, for inclusion in the collections of the Library of Congress (hereafter: "Library") and for administration therein by the authorities thereof, the pre-print material of certain motion pictures owned by Donor described in Schedules "A-5", "C-1", "C-3", "C-5", "C-7", "C-9", and "C-11" annexed hereto (hereinafter: "Collection"), receipt of which is hereby acknowledged by the Library.

Use of said materials shall be subject to the conditions hereinafter enumerated:

1. This is a gift of the physical property contained in said Collection only, and except for the gift herein made, the Donor reserves all right, title and interest in and to all the property constituting the Collection, including, but not limited to the rights of commercial exploitation, reproduction, publication, exhibition, television broadcasting or transmission (or reproduction and transmission by any other means now existing or by future improvements and devices which are now or may hereafter be used in connection with the production, transmission or exhibition of motion picture materials), or any other intangible rights to which the Donor is entitled

throughout the world, whether by license, under copyrights, common law, or other laws now existing or which may exist or be passed in the future.

2. Use of the Collection shall be limited to private study on the Library's premises by researchers engaged in serious research, and no other use shall be permitted, except with the written consent of the Donor, or except as hereinafter provided.

3. The Collection is being donated to the Library by Donor as a means of assisting the Library in enriching the National Collection of Motion Pictures. To this end, Donor permits all or any part of the Collection which is on nitrate film to be converted by the Library to preservation safety pre-print material and prints, which pre-print material and prints will become the physical property of the Library. The reservation of commercial exploitation, reproduction and other intangible right and interests set forth in Paragraph 2 hereof shall likewise apply to the use of the pre-print material and prints produced by the Library pursuant to the second sentence of this Paragraph 3 and which are to become the physical property of the Library.

4. The Collection shall be physically transferred, as space becomes available, from Donor's present facilities to storage facilities provided by the Library at the sole cost and expense of the Library, which storage facilities shall be suitable for storage of the Collection. Until transferred to storage facilities provided by the Library as aforesaid, the Library shall, nevertheless, be owner of the Collection, and the Donor shall be deemed to be a gratuitous bailee of the Collection, and in the absence of gross negligence on the part of Donor, Donor shall not be liable to the Library for loss of or damage to the Collection or any part thereof.

5A. Access to the Collection shall be reserved solely as follows:

(i) To Donor upon demand. The Library will, at the request of Donor, direct and process orders for positive safety preservation prints to be made from nitrate negatives or to be made from nitrate negatives or preservation safety pre-print materials, as the case may be, and the Library will release and ship to laboratories designated by Donor any nitrate or preservation safety pre-print materials

for the purpose of converting the same to positive safety preservation prints. Donor agrees to reimburse the Library for the costs and expenses incurred by the Library in the transportation of such negatives and Donor further agrees to pay the cost of preparing such prints, including reasonable administrative expenses incurred by the Library.

(ii) To the University of Wisconsin upon demand. The Library will, at the request of the University of Wisconsin, direct and process orders for positive safety preservation prints to be made from nitrate negatives or preservation safety pre-print materials, as the case may be. All costs and expenses incurred by the Library in the preparation of such prints, including transportation costs and reasonable administrative expenses incurred by the Library, shall be borne solely by the University of Wisconsin.

(iii) To the staff of the Library for administrative purposes as provided herein.

5B. The parties agree, however, that the positive preservation safety prints produced by and for the Library from the nitrate materials in the Collection may be made available for private study, on the Library's premises, to researchers engaged in serious research and, together with any negative or fine grain preservation safety copies, shall

be administered in accordance with the Library's usual and special regulations for the use of motion picture materials, said regulations being enumerated in Appendix B, attached hereto and made a part hereof (except that no reproduction shall be allowed).

6. Donor agrees that, with its prior written consent, not to be unreasonably withheld, the Library shall have the right, from time to time, to transfer physical possession of a reasonably limited number of components of the Collection to other similar motion picture film archives, located anywhere in the world, in exchange for other comparable valuable motion picture material; provided, however, that each such transfer shall be subject to all of the terms and conditions of this Instrument of Gift, which terms and conditions shall be assumed in writing by each such other motion picture film archive.

7. Upon the relinquishing by Donor of copyright in all or any component of the Collection, or of other rights and interests therein as hereinabove described, the Library shall have the right with the prior written consent of Donor, not to be unreasonably withheld, to make such components of the Collection available to educational institutions for

147

purposes of serious scholarly research in accordance with its usual and special regulations for the use of motion picture materials.

In witness whereof Donor has caused this Instrument of Gift to be signed in its corporate name by a duly authorized officer and its corporate seal to be hereunder affixed this 20th day of November, 1969.

UNITED ARTISTS CORPORATION

(Corporate Seal)

By ______________________
Vice President

Accepted for the UNITED STATES OF AMERICA:

L Quincy Mumford
Librarian of Congress (seal)

November 24, 1969
Date

Fantasia-stein

In the July 15, 1991 issue of Variety, Disney studio chief Jeffrey Katzenberg blithely announced the destruction of a classic, and no one seemed to blink. In an article by Marc Berman entitled "Disney Plans Modern *Fantasia*," Katzenberg is quoted at the Video Software Dealers Association in Las Vegas, where he announced plans to create *Fantasia Continued*, which the article refers to as "a new theatrical version" of the 1940 classic.

Scheduled for release in 1996 or 1997, Katzenberg's proposed project "will include new segments and some from the original film." Katzenberg declined to comment on how many new animated segments would be added, nor how many of the original segments would be dropped, nor which of these were deemed no longer appropriate.

But the biggest bombshell was yet to come. Despite the fact that Disney spent several million dollars recently to restore the 1940 premiere release version of *Fantasia* to its original luster for its 50th anniversary, the article states that the studio plans to "retire" the old *Fantasia* permanently now that this new project is in development. To quote Katzenberg: "It will not exist in the form it exists in today. The film is being retired. I don't see a theatrical release or another video release." According to the article, Katzenberg doesn't see a cable or free TV release, either.

The article continues: "By promoting *Fantasia*'s imminent 'retirement,' Disney stands to sell more vidcassettes when they're released Nov. 1, at $24.99 suggested retail price. To further create urgency in the market and boost sales, Disney will stop selling cassettes 50 days after the Nov. 1 street date. It's expected that distributors will stockpile the title." Later, the article goes on to say that "in addition to the standard $24.99 cassettes, Buena Vista Home Video will produce 150,000 boxed sets priced at $99.99."

Deems Taylor, Walt Disney and Leopold Stokowski studied "Rite of Spring" storyboards more than half-a-century ago.

At last Disney's true intent becomes clear. Its mission appears to be twofold: to create a "panic buy" situation to boost sales of the *Fantasia* videocassette, and to be able to produce a new animated product without spending the money to make an entirely new film. The Disney Studio seems willing to destroy the integrity of what many consider the greatest animated film ever made just to line its pockets. Katzenberg's statements have the ring of the threats made by Dino de Laurentiis — who swore we'd never see the original *King Kong* again after he released his version — only worse. *King Kong* surfaced again because Dino didn't own RKO, the studio that produced the original *Kong*, but in this case, Disney can carry out its plan to let the original *Fantasia* rot in a vault.

And, like so many bad ideas, Katzenberg's Frankensteinian hybrid approach to *Fantasia* sets a terrible precedent. Will Rhett Butler decide to remain with Scarlett at the end of *Gone With the Wind*? Will King Kong return to Skull Island instead of climbing the Empire State building? All of these scenarios would become possible if other corporations that own classic films decided to alter them as drastically as Disney wants to alter *Fantasia*.

The response to Disney's *Fantasia* ploy thus becomes crucial; the likelihood of widespread tampering would improve significantly if these "caretaker" corporations knew that film buffs would run to video stores if they leaked plans to significantly alter or "retire" favorite films. Is Disney really that cynical? The ramifications of such tampering make the ravages of colorization look positively benign by comparison.

These alterations are particularly irksome when one considers that the original Disney classics, crafted under Walt's supervision in the spirit of trying to achieve the highest artistic result, were the fulfillment of his lifelong dream to create quality animated films, of which *Fantasia* represents an almost unassailable pinnacle. Now the studio seems willing to rape the original Disney product while profiting from the good faith engendered by Walt's original films. If the new Disney Studio truly wants to follow in Walt's footsteps, it should plan to create more original products like 1989's excellent *The Little Mermaid* or a bona fide sequel to *Fantasia*.

Should Disney decide to make such a sequel, you'll hear no objections from this quarter. But to arbitrarily dismember a masterpiece and then keep the original film from the public is an act of artistic terrorism. *Fantasia* should be the first film considered for the National Film Registry's list of protected films this year so that the studio that bears his name cannot tamper with Walt Disney's original vision. *Fantasia* is a national treasure — it is vital that we ensure that the restored original version will always be available not just to film historians, but to future generations of filmgoers as well.

— Ron Magid

150

WHITE & CASE

1155 AVENUE OF THE AMERICAS
NEW YORK, NEW YORK 10036-2787

(212) 819-8200
FACSIMILE: (212) 354-8113
TELEX: 233188

UNITED STATES
WASHINGTON, D.C.
MIAMI
LOS ANGELES

LATIN AMERICA
MEXICO CITY

ASIA / PACIFIC
TOKYO
HONG KONG
JAKARTA
SINGAPORE

EUROPE
LONDON
PARIS
BRUSSELS
FRANKFURT
STOCKHOLM
HELSINKI
MOSCOW
BUDAPEST
PRAGUE
WARSAW
ISTANBUL
ANKARA

MIDDLE EAST
JEDDAH
RIYADH

GENERAL COUNSEL
OF COPYRIGHT
NOV 30 1993
RECEIVED

Comment Letter
RM 93-8
No. 98

IFK:JLH

November 29, 1993

re Duration of Copyright Term of Protection
(Docket No. RM 93-8)

Dorothy Schraeder, Esq.
General Counsel
Office of the General Counsel
Copyright Office, Room 407
James Madison Memorial Building
First and Independence Avenue, S.E.
Washington, DC 20559

Dear Dorothy:

I am pleased to enclose an original and ten copies of the Joint Supplemental Comments of the Coalition of Creators and Copyright Owners in this matter. I would appreciate it if one copy could be date-stamped by the Copyright Office and returned to me for our files.

With many thanks,

Sincerely,

I. Fred Koenigsberg

BY OVERNIGHT DELIVERY

Enclosures

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of DURATION OF COPYRIGHT TERM EXTENSION	Docket No. RM 93-8

JOINT SUPPLEMENTAL COMMENTS
OF THE COALITION OF CREATORS
AND COPYRIGHT OWNERS

At the conclusion of the hearing before the Copyright Office on September 29, 1993, the Copyright Office panel invited interested parties to submit additional comments. Accordingly, the undersigned parties, representing creators and copyright owners (collectively, the "Coalition of Creators and Copyright Owners" or the "Coalition") submit these supplemental comments in support of extending the duration of copyright in the United States by 20 years for all works.[1/] Many of the questions asked of the Coalition's witness and the other witnesses, and the comments subsequently submitted to the Copyright Office in

---

1/ Since our initial written submission, the American Music Center, Inc. and the Motion Picture Association of America, Inc. have joined the Coalition.

opposition to an extended copyright term (collectively, the "Opposers' Comments")[2] revolved around certain issues. We therefore believe it is useful to address these issues.

As a preliminary matter, we note that the European Community ("EC") Directive was adopted on October 29, 1993. Thus, to the extent certain comments reflected the nature of the terms of the EC Directive as mere "proposals" (see Opposers' Comments), those comments are moot.

1. Will United States Term Extension Yield Greater Protection For United States Works In The EC?

One of the concerns expressed in several questions by the Copyright Office panel was the apprehension that the European Community ("EC") may deny United States works an extended term of copyright protection, even if we extend our term, justifying that denial of protection because of inconsistencies between United States and EC copyright law. Transcript of the hearing before the United States Copyright Office, Library

[2] Those filing comments in opposition were: Kit Parker Films, Monterey, California; Something Weird Video, Seattle, Washington; Bret Wood, Decatur, Georgia; Fairness in Copyright Coalition, Orland Park, Illinois; Ad Hoc Committee for a Reasonable Copyright Term, Medford, Oregon; Gene Vazzana, Editor of the Silent Film Newsletter, New York, New York; and Earl and Irene Blair, Honey, Alabama.

of Congress, held on September 29, 1993 at pp. 15, 73, 74.[3]

We need not argue with the EC over whose copyright law is "better." (We believe that, in many ways, the protection afforded to copyrighted works in the United States is superior to that in the EC.) Our focus should be on recognizing and taking advantage of the benefits of a longer copyright term.

We believe that the international treaty obligations of EC member nations require the EC countries to grant United States works an extended term if we do extend our term.[4] If they do not abide by their treaty obligations, there are remedies available to us.

However, if we do not extend our term, it is <u>certain</u> that the works of American authors will receive 20 years less protection in the EC than the works of their European colleagues, because the EC Directive explicitly invokes the rule of the shorter term. EC Directive, Art.

---

[3] The transcript is hereafter cited as "Tr. [page number]".

[4] The Berne Convention requires national treatment. Art. 5. Given that the exception to national treatment embodied in the rule of the shorter term would be inoperative if the United States' copyright term equals or exceeds that of the EC, EC member nations would therefore be bound to grant United States works the extended term of copyright which resulted from the EC Directive, as part of their Berne obligations.

7. By extending our term, we create the certain obligation, and therefore the strong potential, for comparable protection in the EC. We also strengthen the bargaining position of our trade negotiators. In the words of a state lottery promotion, "you have to be in it to win it." If we extend our term, we have an excellent basis for longer protection in the EC -- indeed, the force of law is on our side. If we do not, we have no chance at all. The choice is simple and obvious -- we should extend our term.

A related question was raised as to why the proposed 20 year extension in the United States seeks protection for certain works which would be in excess of that called for by the EC Directive. Tr. 22, 47; Opposers' Comments. For example, collective works could receive longer protection in the United States, if we extend all terms by 20 years, than they will in the EC. The answer is that we must remain true to the principles which govern our own copyright law. We do not distinguish between types of copyrighted works in the duration of copyright granted. Further, as the witness for the Motion Picture Association of America testified, copyright must protect not only authors, but also those copyright owners who make substantial investments in the creation and distribution of copyrighted works. Tr. 62-64. These investments enhance the availability of works to the public. They can result

in benefits to individual authors and creators as well, thus providing the encouragement mandated by our Constitution. Tr. 23.

We must not lose sight of the overriding fact: term extension is justified beyond question by the economic benefits to be realized by our country -- in jobs, in trade, in our balance of payments -- as a result of the additional 20 years of protection that will be accorded in the EC. Term extension will accrue to the benefit of the public, as a whole, as well as to individual authors and copyright owners and their heirs.

Most of the Opposers' Comments seem to have come from parties interested in seeing motion pictures enter the public domain. The Opposers, for the most part, assume that if our copyright terms are extended, United States motion pictures will have a longer term of copyright (95 years) than works for which a legal person is the rightholder in the EC countries (70 years). See, EC Directive, Art. 1(4).

Their argument is based on a faulty premise and is flatly wrong. Under the EC Directive, there is a special superseding provision for motion pictures: the term of copyright in motion pictures is based on the longest life of the four categories of "authors," plus 70

years.[5] See, EC Directive, Art. 2(2). Thus, in the EC, a motion picture could easily be accorded a copyright term of 95 years if the youngest of any of the four persons designated its "authors" is, for example, 45 years old and lives to the age of 70.

Not only do the Opposers have their facts wrong, but their opposition to copyright term extension for motion pictures could be especially harmful to the United States' national economic security. Motion pictures, after all, are one of our most lucrative trade exports. The loss of 20 years of protection for United States films in the EC would be particularly damaging economically.

2. Which Countries Currently Apply the Rule of the Shorter Term?

The Copyright Office panel asked which countries currently apply the rule of the shorter term, and whether it is applied by statute, executive decree, or case law. Tr. 18. Both the Berne Convention and the Universal Copyright Convention ("U.C.C.") include the rule of the shorter term.[6] Authoritative commentators have stated

---

[5] The four categories are the director, the screenwriter (the author of the scenario), the scriptwriter (the author of the dialogue) and the composer of the music.

[6] 1 International Copyright Law and Practice § 5[2] at INT-125 (Nimmer and Geller eds. 1990); Berne Art. 7(2) (Rome, Brussels), Art. 7(8) (Paris); U.C.C. Art. IV(4) (Geneva, Paris).

that, under both conventions, unless internal law provides otherwise, the rule of the shorter term applies.[7] The Paris text of Berne (Article 7(8)) makes clear that absent a contrary provision of domestic law, the rule of the shorter term applies.[8]

According to Nimmer, "most of the countries that are significant for copyright purposes" follow the rule of the shorter term.[9] In addition, the rule is usually applied by statute or other express statement of the Government.[10]

The following is a survey of some of the more significant countries in terms of trade that apply the rule of the shorter term, and the source of that application:

> <u>Australia</u> -- by statute; the rule applies to works protected only by virtue of origin in a Berne or U.C.C. country, because Berne and U.C.C. follow the rule
>
> <u>Belgium</u> -- by legislation
>
> <u>Brazil</u> -- not expressed in 1973 Copyright Act, but applied by implication from 1912 Act and by protection of foreign works under treaties and conventions

---

[7] <u>Id.</u>; but cf. 3 <u>Nimmer on Copyright</u> § 17.10[A] at 17-59 ("The view has been expressed, however, that if a country's laws are silent on the issue, it should be presumed that the rule of the shorter term does not apply." (citation omitted)).

[8] <u>See</u> 3 Nimmer, § 17.10[A] at 17-59 n.29.

[9] <u>Id.</u> at 17-55.

[10] <u>Id.</u>

Denmark -- by statute

Finland -- by statute or government decree

France -- by case law

Germany -- by statute (with limited exceptions)

Hungary -- by statute

India -- by government decree

Israel -- by statute or government order

Italy -- by statute or government decree

Japan -- by statute

Netherlands -- by statute

Poland -- assumed by application of Berne and U.C.C.

Spain -- for works protected by Berne or U.C.C. (which are treated as self-executing treaties in Spain)

Sweden -- by Royal Decree

The following countries do not now apply the rule of the shorter term:

Austria

Canada

Greece (no clear rule -- as an EC member, must apply rule at the latest July 1, 1995)

Hong Kong (applies pre-1989 U.K. law)

Switzerland

United Kingdom (as an EC member, must apply rule at the latest July 1, 1995)

United States

3. Should Term Extension Be Used To Provide Public Funding For the Arts?

The Copyright Office panel asked whether a 20 year extension of the copyright term should inure solely to the benefit of authors and copyright owners, or whether part of the revenues generated during the extended term should be set aside by the government to fund the arts. Tr. 19, 44, 74. We advocate a 20 year term extension for the direct benefit of the creators and copyright owners who have made the creative and economic investments in copyrighted works. We do not want to be in the position, in effect, of advocating a "copyright tax" on works after a certain period of time. Put another way, if additional funding of government support for the arts is to be made (a goal we enthusiastically support), it should be provided by the entire American public, not just one segment of it -- the segment that, given the economic plight of many authors and copyright owners, can least afford it.

An extended term will, however, result in the availability of additional government income which could be used to fund the arts. As noted in the Coalition's initial submission, the copyright and information industries contribute substantially to our economy, particularly in terms of employment and foreign trade. An additional 20 years of protection will produce tremendous revenues for

the government, which would justify continued and expanded government expenditures in connection with archiving and preservation (see Tr. 79, 81, 82-83 and Opposers' Comments), as well as funding for the arts.

4. Does the Increase in Life Expectancy Justify Term Extension?

The Copyright Office panel noted the fact that life expectancy has increased, but questioned whether this increase would justify a 20 year extension of copyright terms. After all, the panel stated, the increase in life expectancy increased the author's life span, and hence any total term of protection based upon the author's life. Tr. 14, 42.

But that fact is not dispositive for several reasons: Certainly, the increased life expectancy of an author will extend the term of copyright by a few years under the life-plus-fifty-years term currently applicable to post-1977 works in the United States. However, the life-plus term is also designed to protect the next two generations of the author's heirs. Extended copyright term is necessary to achieve adequate protection for the author's heirs, during the additional years they, too, are expected to live.

Moreover, in light of the modern trend toward having children later in life, after careers are established, the intended benefit to the author's heirs will be better achieved by the extension of copyright term for 20 years. And we must not lose sight of the fact that pre-1978 works are not protected in the United States for a life-plus term, but rather for a fixed term. Increased life expectancy impacts on the author as well as the next two generations for these works.

Under the life-plus system, an author's later published works receive a shorter period of protection than do his or her earlier works. Similarly, the works of authors who die young receive a shorter term of protection than those who live to a ripe old age. See Tr. 13, 48-49. Increasing the *post-mortem* term of copyright will not completely rectify this situation, but it will provide significant benefits to the heirs of those authors who create late in life or who untimely pass away.

The longevity issue is somewhat related to another concern expressed by the Copyright Office panel: will an additional 20 years of copyright protection produce administrative difficulties of recording and tracing a work's chain of title? Tr. 52, 53, 68 and see Opposers' Comments. We believe that such administrative "difficulties" are nonexistent. The current procedures and

practices for keeping track of works are adequate even with an extended term. And if any such "difficulties" do exist, they are slight indeed compared to the vast economic rewards to be gained in the United States, and the public interest in fostering creativity and high quality distribution, by extending copyright terms.

5. Would Term Extension Alter the Balance of Competing Interests?

The Copyright Office panel asked if a bargain had not already been struck, at the very least for works already in existence, as to the duration of copyright protection. Tr. 39, 71. If the life-plus-fifty-years term enacted under the Copyright Act of 1976 struck an appropriate bargain, why should it be changed?

First, that argument flies in the face of precedent. If that reasoning had been followed, there would have been no cause to extend the 56-year total copyright term of the 1909 Act for then-existing works to 75 years when the 1976 Act was passed; nor would there have been any reason to do away with the renewal registration requirement for "old law" works in 1992.

Rather, we suggest, any such "bargain" must be re-evaluated as conditions change. Our copyright law must evolve. Adding twenty years to our current term of copyright is not only an incremental increase within the

"limited times" for protection dictated by our Constitution (see Opposers' Comments), and fully consonant with the Constitutional provision, but also presents a golden opportunity for the United States to obtain an additional 20 years of protection and tremendous economic rewards in the lucrative EC market.

Moreover, our adoption of the life-plus-fifty years term in 1976 was almost 70 years behind the times -- virtually every civilized country, except the United States, had gone to a life-plus-50-years term by the beginning of the century. We should stop playing "catch-up" with the rest of the civilized world.

The panel raised another, related potential argument against term extension: the public supposedly has an interest in the proliferation of derivative works based on works that fall into the public domain. Tr. 37, 66, 77-78. See also, Opposers' Comments. But the fact is that there is no evidence that availability of works in the public domain leads to significant exploitation of the works by way of derivative works. The Opposers' Comments argument, that the public will be substantially deprived of access to works of any significance as a result of term extension, rings hollow. The Opposers have cited a few exceptional examples of public domain works or derivatives thereof, that have been made well and are widely publicly

available. The Opposers' Comments do not, however, demonstrate that, for example, the new theatrical and film versions of Phantom of the Opera which they cite would not have been made but for its public domain status.

Indeed, the argument seems to work the other way: works protected by copyright are far more likely to be made widely available to the public in a form the public wants to enjoy than works in the public domain. The costs of quality production, distribution and advertising, and changing technology, all require a major investment to exploit most works. Few are willing to make such significant expenditures for the creation of derivative works if they will have to compete with other derivative works based on the same underlying work. Therefore, the public is more likely to see high caliber derivative works if they are based on copyrighted works and made under authorization from the copyright proprietor.

Nor is there any evidence that public domain works, or derivative works based on public domain works, are less expensive for the consumer. A quality modern edition of Shakespeare costs no less than copies of copyrighted works; movie theaters charge as much for movies based on public domain works as for those based on copyrighted works. The public is certainly not getting a

break on _Phantom of the Opera_ ticket prices as a result of its public domain origins.

This, too, is a reason why juridical entities, as well as individual authors, should be accorded an extended term of protection. _See_ Tr. 22. Relatively few individual authors have the resources to exploit works in the commercial marketplace. Music and book publishers, motion picture companies and software firms are all necessary to produce, and bring to the public, copyrighted works in quality form. Extended copyright term will provide additional economic incentive to such copyright owners, and will finance future authorship, production and distribution.

The same rationale addresses other concerns raised by term extension. Although existing copyright protection was apparently adequate to encourage the initial creativity necessary for existing works, extended terms should apply to works already in being to encourage investment in those works. _See_ Tr. 39. We must encourage not only initial creativity, but investment in new technology to maximize the dissemination of older works. And certainly, a longer copyright term will provide enhanced incentive to living authors.

We have not overlooked the concerns of the user community. _See_ Tr. 50-51, 52; Opposers' Comments.

Certainly, those copyright users who exploit works during the 20 year extension will have to pay for that right. There are at least two reasons why they should. First, if the works are of value to them, they should pay for them. Second, the benefits we will reap in the international arena -- benefits to our nation's economy, creating jobs and income -- far outweigh the costs to domestic users. The question is simply put: is the small price to be paid by the user community more important than the benefits term extension will provide to our national economic security? We suggest that the choice is clear.

Fair use issues should not be impacted at all. See Tr. 50-51, 65. If certain uses are fair for life-plus-fifty-years, they will be fair during the next twenty years of protection as well.

We do not urge an arbitrary or unreasonable (or perpetual, as argued in the Opposers' Comments) extension of the term of copyright. Given the current circumstances, as set forth in our Comments and testimony, twenty years is an appropriate period of extension. It would reflect the importance of copyright to our society, it would recognize the domestic and international economic incentives for an expanded term, and it would more accurately achieve the desired goals of protecting the author and two generations of his or her heirs.

6. <u>Should Retroactive Copyright Protection be Granted?</u>

The panel asked if retroactive protection of copyright posed Constitutional problems. Tr. 15, 17, 45. The Opposers' Comments also take strong exception to any term extension that would include retroactive protection for public domain works. As discussed in the Coalition's initial Joint Comments, retroactivity is a complex issue, but one which can be accommodated. As we have already noted, NAFTA will result in retroactive protection for certain works. We understand that the Administration has already proposed implementing retroactivity legislation which the Department of Justice finds passes Constitutional muster.

Addressing these Constitutional implications would require a longer analysis than is feasible here. We are certainly prepared to do so at the proper time.

We support retroactive protection for all works for two reasons. First, for reasons of fairness: many of those works fell into the public domain because there was a failure to comply with our law's unique, complicated, and onerous formalities, of which many foreign and domestic authors may have been ignorant. Second, for reasons of our self-interest: if we restore copyrights to all works here,

foreign countries will be impelled to restore copyrights to United States works abroad.

7. Should There be an Interim Extension of Copyright Term?

It is critical that Congress move quickly to enact interim extension of copyright to protect those works that would otherwise fall into the public domain while the issue is under consideration. A temporary extension is vital to prevent the inequitable forfeiture of rights in works on the eve of expiration. Interim extension was granted during the long gestation period of the 1976 Copyright Act. Similarly, it is appropriate and necessary now.

CONCLUSION

We urge the Copyright Office to support legislation to increase United States copyright term by 20 years for all works, and for an immediate interim extension.

Respectfully submitted,

AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS (ASCAP)

By Morton Gould /jfa
Morton Gould
President
One Lincoln Plaza
New York, NY 10023
(212) 621-6000

ARTISTS RIGHTS SOCIETY

By Theodore Feder /jfa
Dr. Theodore Feder
President
65 Bleecker Street
9th Floor
New York, NY 10012
(212) 420-9160

ASSOCIATION OF INDEPENDENT MUSIC PUBLISHERS (AIMP)

By Steven Winogradsky /jfa
Steven Winogradsky, Esq.
President
P.O. Box 1561
Burbank, CA 91507-1561
(818) 842-6257
(818) 368-3538

BROADCAST MUSIC INC. (BMI)

By Frances Preston /jfa
Frances Preston
President and CEO
320 West 57th Street
New York, NY 10019
(212) 586-2000

DRAMATISTS PLAY SERVICE

By ______________________
Stephen Sultan
President
440 Park Avenue South
New York, NY 10016
(212) 683-8960

GRAPHIC ARTISTS GUILD

By ______________________
Polly Law
First Vice President and Chairperson
11 West 20th Street
New York, NY 10011-3740
(212) 463-7730

MUSIC THEATRE INTERNATIONAL

By ______________________
Greg Smith
Managing Director
545 Eighth Avenue
New York, NY 10018
(212) 868-6668

MUSICAL THEATRE COALITION

By ______________________
Lisa Alter
Counsel
c/o Rodgers and Hammerstein Organization
1633 Broadway, Suite 3801
New York, NY
(212) 541-6600

NATIONAL WRITERS UNION

By ______________________
Maria Pallante
Executive Director
873 Broadway, Suite 203
New York, NY 10003
(212) 254-0279

SESAC, INC.

By ______________________
Ira Smith
Co-Chairman
421 West 54th Street
New York, NY 10019
(212) 586-3450

VISUAL ARTISTS AND GALLERIES ASSOCIATION, INC. (VAGA)

By ______________________
Robert Panzer
Executive Director
1133 Avenue of the Americas - 15th Floor
New York, NY 10036
(212) 840-1805

VOLUNTEER LAWYERS FOR THE ARTS (VLA)

By ______________________
Daniel Mayer
Executive Director
1 East 53rd Street
6th Floor
New York, NY 10022
(212) 319-2787 (Ext. 22)

WRITERS GUILD OF AMERICA, EAST

By Mona Mangan, ifm
Mona Mangan
Executive Director
555 West 57th Street
New York, NY 10019
(212) 767-7800

AMERICAN MUSIC CENTER, INC.

By Carl Stone, ifm
Carl Stone
President
30 West 26th Street
Suite 3001
New York, NY 10010
(212) 366-5260

MOTION PICTURE ASSOCIATION OF AMERICA, INC.

By Fritz E. Attaway, ifm
Fritz E. Attaway
Senior Vice President
and General Counsel
1600 Eye Street, N.W.
Washington, D.C. 20006
(202) 293-1966

Dated: November 30, 1993

172

Before the
UNITED STATES COPYRIGHT OFFICE
LIBRARY OF CONGRESS
Washington, D.C.

In the Matter of	)	
DURATION OF COPYRIGHT	)	Docket No. RM 93-8
TERM OF PROTECTION	)	

SUPPLEMENTAL COMMENTS OF THE
NATIONAL MUSIC PUBLISHERS' ASSOCIATION, INC.

At the close of its September 29, 1993, hearing on the possible extension of the duration of copyright protection under United States law, the Copyright Office ("Office") panel invited interested parties to submit additional comments for the written record. The Office subsequently announced that it would hold the record open until November 30, 1993. Accordingly, the National Music Publishers' Association, Inc. ("NMPA"), the principal trade association for the American music publishing community, submits these supplemental comments in support of extending the duration of copyright by 20 years.

Part I of our supplemental comments discusses the implications for American rights owners and creators of the European Community's ("EC" or "Community") recent approval of a directive harmonizing copyright term. Part II addresses several of the questions raised by the Copyright Office panel during the course of the September 29 hearing. Part III offers recommendations aimed

at preserving the opportunity for a thorough assessment at the national and international levels of the merits of extension of the duration of copyright protection.

We have not attempted herein to respond in detail to the more than 60 separate statements the Office has received to date. We understand that during the past week, the Office has continued daily to receive a significant number of additional comments, and that the vast majority express the general opposition to term extension of individuals and businesses with a stake in the exploitation of public domain motion pictures. Others, however, may raise more specific points that warrant thorough discussion. In the interest of assuring that the record in this inquiry gives the Office and the public the benefit of argument and counter argument on the full range of issues raised by term extension, NMPA strongly urges the Office to allow a reasonable period for interested parties to review all initial round comments and submit replies.

I. Approval of the EC Directive on Term Harmonization.

On October 29, 1993, the EC Council of Ministers gave its final approval to a directive aimed at harmonizing the terms of copyright and neighboring rights protection within the Community ("EC Directive"). The EC Directive places upon the twelve EC Member States the obligation to bring their domestic laws into conformity with its harmonized term and related provisions no later than July 1, 1995.

As was discussed at length during the September 29 hearing, the EC Directive replaces the varying terms of copyright protection within the Community with a harmonized term measured as the life of the author plus 70 years post mortem auctoris ("p.m.a."). The duration of protection for related or "neighboring" rights is to be 50 years.[1]

Music and other works of United States origin, however, would not receive an extended term of protection. The directive would block the flow of the considerable benefits of the extended term to many non-EC nationals by requiring Member States to apply the "rule of the shorter term" (also known as the "rule of comparison of terms")[2] under the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention").

---

[1] The 50-year term for related rights of performers, sound recording producers and producers of the first fixation of a film generally is to be measured from the date of lawful publication or lawful communication to the public, whichever is the earlier. The term of related rights of broadcasting organizations is to be measured from the first transmission of a broadcast, whether by wire or over the air (including by cable or satellite). EC Directive, Art. 3.

[2] Article 7(8) of the Berne Convention, which embodies the rule of the shorter term, provides

> In any case, the term (of copyright) shall be governed by the legislation of the country where protection is claimed; however, unless the legislation of that country otherwise provides, the term shall not exceed the term fixed in the country of origin of the work.

The rule of the shorter term operates as an exception to the Berne Convention's hallmark of national treatment.[3] It allows countries that choose to apply the rule to protect the works of foreign nationals only for such period as such works are protected in their country of origin. Thus, unless the United States acts to extend its own term of protection, works of U.S. authors will receive the 50 p.m.a. term provided under our law, and not the life-plus-70 year term that the Community, through the Member States, will accord to EC authors and their successors in interest.

Based on the importance of the European market for American music, NMPA believes the impact of this action on U.S. music publishers and songwriters will be immediate and dramatic. In 1990-91, music publishing revenues in excess of $2.517 billion were generated within the 12 EC Member States and five additional nations that comprise the European Economic Area. This amount accounted for 58 percent of worldwide music publishing revenues.[4]

Application of the rule of the shorter term in the vital and growing European market means that American copyright owners and creators of older works will lose out on the opportunity share in revenues generated there during

---

[3] Guide to the Berne Convention for the Protection of Literary and Artistic Works (Paris Act, 1971), World Intellectual Property Organization, WIPO Publication No. 615(E) at 50-51 (1978).

[4] 1990-91 International Survey of Music Publishing Revenues, National Music Publishers Association (1993). The NMPA study reveals that, although the United States is the single largest music market in the world, it is followed closely by Germany ($626.2 million), France ($491.2 million) and the United Kingdom ($434.5 million).

the period of the extended term. Moreover, exclusion of American works, including music, from extended protection will generate a windfall for commercial users of our works and for non-U.S. rights owners whose works are still protected. American classics soon to enter the public domain, including the works of George Gershwin and Duke Ellington, can be expected to continue to be recorded and communicated to the public, but rights owners and heirs will be denied protection and the right to be paid for such uses.

By imposing on EC Member States the obligation to apply the rule of the shorter term, the Community has made clear that to receive benefits beyond the minimum required by the Berne Convention, its trading partners must offer reciprocal protections. This resort to reciprocity can, and -- we believe -- should, be viewed as discriminatory and trade-distorting (see Part II.C., below). But the fact remains that unless and until our own copyright term is extended, U.S. creators and rights owners are likely to face the rule of the shorter term and the loss of revenue it carries with it, not only within the EC, but also in any number of nations that can be expected to follow its lead.[5]

---

[5] Like the United States, the EC has a significant sphere of influence in international copyright developments. Its laws and policies are looked to as a primary model by other nations of Western Europe and, in particular, by Eastern European states. The EC also engages nations in bilateral negotiations aimed at securing improved levels of protection for works of EC origin, often using Community standards as the bench mark.

II. Responses to Questions Posed by the Copyright Office.

A. Which Countries Currently Apply the Rule of the Shorter Term?

The Copyright Office panel invited interested parties to identify countries that currently apply the rule of the shorter term and to specify whether individual countries do so pursuant to statute, decree, or judicial decision.

In an effort to assist the Office in this regard, NMPA contacted the World Intellectual Property Organization ("WIPO") secretariat to determine whether WIPO has ever surveyed Berne Convention member states on this point. (WIPO is the international organization responsible for administrative matters related to the Berne Convention.) We have been advised that WIPO has conducted no such survey. Moreover, because the express language of Article 7(8) of the Berne Convention does not require a country to submit a declaration to the WIPO Director General when it intends to apply the rule of the shorter term embodied in that article, WIPO has no direct source for such information.[6]

We understand that the Joint Supplemental Comments of the Coalition of Creators and Copyright Owners contains a partial survey of nations' practices with regard to the rule of the shorter term. In assessing the potential impact of the rule of the shorter term on U.S. interests, it is important to recognize, however, that the Convention language anticipates that the rule will apply in the

---

[6] NMPA wishes to acknowledge with appreciation the assistance of the WIPO secretariat and, in particular, of Mr. Richard Owens, Head, Copyright Law Section, Copyright Division.

absence of domestic legislative provision to the contrary.[7] Consequently, a review of domestic laws cannot be counted on to reveal the extent to which the rule can be expected to be applied by U.S. trading partners. For example, a leading authority has speculated that Spanish courts would apply the rule of the shorter term, despite the silence of its domestic law on the question.[8] Further, the problem of estimating the full negative impact of the rule of the shorter term is compounded by the fact that prior to the emergence of the recent trend toward life-plus-70, fairly general acceptance of the 50-year p.m.a. term brought the rule into play only in rare instances.[9]

NMPA anticipates that the rule of the shorter term will be applied widely by nations that move to extend duration of protection. The Berne Convention establishes no obligation to make extended rights available on the basis of national treatment, and countries can apply the rule with without the need for domestic legislation. Furthermore, nations can be expected to assert that national economic interests would not be served by making such rights available to foreign nationals, absent a clear multilateral or bilateral commitment to do so. Without extended duration in the United States, NMPA's music publisher members and their songwriter partners see little prospect of sharing in the

---

[7] Stewart, International Copyright and Neighboring Rights § 5.54 (2d ed. 1989); Ricketson, The Berne Convention for the Protection of Literary and Artistic Works: 1886-1986 § 7.38 (1987).

[8] Dietz, El Derecho de Autor en Espana y Portugal, 150 (Spanish translation, 1992).

[9] See Stewart, § 5.54.

benefits of extended protection in what we believe will be an increasing number of important foreign markets.

B. Would Extension of the Term of Copyright in the United States Guarantee U.S. Rights Owners the Benefits of the Extended Term within the EC?

During the September 29 hearing, several members of the Office panel expressed some concern that the EC may attempt to deny United States works extended protection within the Community, even if duration of protection in the U.S. were extended to 70 years p.m.a. It is unfortunately true that some EC Member States have exploited differences between U.S. and continental European protection regimes in order to deny the benefits of national treatment to works of U.S. origin. France's treatment of its video levy is the classic example of this.

Although it is wise to anticipate that the Community (or individual Member States) may attempt to apply "mirror image" reciprocity as the key to access to the extended term and its benefits, it would be unwise, in our view, to fail to move forward with extension of term under U.S. law on the basis of such concerns. Unless we extend our copyright term, the works of U.S. authors are certain to receive an inferior level of protection in Europe. With a comparable extended term in the U.S., individual American rights owners (in litigation) and the U.S. Government (in trade negotiations) would be positioned to argue convincingly for national treatment. And assuming a successful conclusion of the ongoing Uruguay Round of multilateral trade negotiations in December 1993, the

U.S. would have the additional option of pursuing recalcitrant nations through the dispute settlement mechanism of the General Agreement on Tariffs and Trade.

C. Would Extension of the Duration of Protection Alter the Copyright Balance?

The Office panel asked whether extension of the duration of copyright under U.S. law would alter the balance our copyright law strikes between the interests of creators and rights owners on one hand, and of users and the public at large on the other. NMPA believes the answer to this question is "no."

In enumerating reasons for the move to the life-plus-50 term in the 1976 Copyright Act, both the House and Senate Judiciary Committees observed that,

> 3. Although limitations on the term of copyright are obviously necessary, too short a term harms the author without giving any substantial benefit to the public. The public frequently pays the same for works in the public domain as it does for copyrighted works, and the only result is a commercial windfall to certain users at the author's expense. In some cases, the lack of copyright protection actually restrains dissemination of the work, since publishers and other users cannot risk investing in the work unless assured of exclusive rights.
>
> * * * *
>
> 7. . . . [T]he disparity in the duration of copyright [between the U.S. and some foreign nations] has provoked considerable resentment and some proposals for retaliatory legislation. Copyrighted works move across national borders faster and more easily than virtually any other economic commodity, and with the techniques now in common use this movement has in many cases become instantaneous and effortless. The need to conform the duration of protection to that prevalent throughout the rest of the world is increasingly pressing in order to provide certainty and simplicity in international business dealings. Even more important,

181

> a change in the basis of our copyright term would place the United States in the forefront of the international copyright community.[10]

Congress's reasons for extending the term of protection in 1976 apply today with even greater force. It remains true that publishers require a financial incentive in order to make works available to the public and that copyright, by providing that incentive, benefits the public by promoting the wider availability of protected works. The costs of quality production, distribution, advertising and adaptation of works to changing technologies continue to demand substantial investment. As a result, and as Congress has confirmed, it is common for quality editions of works in the public domain to cost as much a copies of works still in their term of protection.

Moreover, the importance of American music and other copyright works to the U.S. economy has increased dramatically since 1976. According to a report recently released by the International Intellectual Property Alliance, of which NMPA is an active member, foreign sales of U.S. copyright industries exceeded $36 billion in 1991, surpassed only by the export performance of the U.S. aircraft industry and the agricultural sector. Preliminary data for 1992 indicate that foreign sales will exceed $39.5 billion, for an increase of more than nine percent over 1991. The core U.S. copyright industries today account for 3.6 percent of the U.S. Gross Domestic Product, rising from 2.2 percent in 1977. Total copyright industry employment in the U.S. is estimated at more than 5.5

---

[10] H.R. Rep. No. 1476, 94th Cong., 2d Sess. 134-135 (1976); Senate Report at 117-118.

182

million jobs.[11] In the face of statistics such as these, it is difficult to deny that the American public has a substantial stake in strong copyright protection that goes well beyond its interest in "free" access to public domain works.

NMPA believes that extension of the duration of copyright in the United States will serve the public and preserve the balance of interests under U.S. copyright law.

III. Recommendations.

NMPA applauds the Office's efforts to study arguments for and against an extended copyright term in the United States in light of international developments and the growing foreign market for U.S. works, including American music. For the reasons discussed in NMPA's written statement filed September 22, 1993, in its oral testimony and in these supplemental comments, NMPA strongly urges the Office to support interim measures that will allow reasoned debate to proceed here and in international fora.

On the domestic front, NMPA supports prompt enactment of legislation to protect works that would otherwise fall into the public domain during Congressional consideration of a term extension measure. During deliberations that culminated in the 1976 Copyright Act, Congress enacted such legislation on

---

[11] Siwek and Furchtgott-Roth, Copyright Industries in the U.S. Economy: 1993 Perspective (Oct. 1993) (prepared for the International Intellectual Property Alliance).

nine occasions, beginning in 1962. We believe similar legislative action is called for now.[12]

We further recommend that the United States seek to have the issue of term extension restored to the agenda of the continuing multilateral discussions of a possible protocol to the Berne Convention. Duration of protection for all Berne works was discussed at the first session of the Committee of Experts on a Possible Protocol, convened in 1991. At that time, debate revealed strong support for extension of term for photographic works, but participating governments were divided over whether the minimum term to be accorded under the convention should be increased to life-plus-70. Agreement was reached to postpone further discussion of term extension to a future meeting of the Committee of Experts. Subsequent international developments clearly warrant that the issue be revisited at the next such meeting, currently scheduled for May/June 1994.

---

[12] See, e.g., Pub. L. 87-668, 76 Stat. 555 (Sept. 19, 1962) (extension until Dec. 31, 1965).

183

Conclusion

NMPA appreciates the efforts of the Copyright Office to promote public dialogue on duration of protection issues, and looks forward to an opportunity to reply to comments submitted to date.

Respectfully submitted,

Edward P. Murphy /sm

Edward P. Murphy
President and CEO
National Music Publishers' Association, Inc.
205 East 42nd Street
New York, New York 10017
(212) 922-3260

Dated: November 30, 1993

MAGTEK

Serving The Audio/Video Industry Since 1981

Tel # 913-451-1151
Fax # 913-451-2160

P.O. Box 395
Shawnee Mission
Kansas 66201

November 29th, 1993

Ms. Dorothy Schrader
General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

RE: Copyright

Dear Ms. Schrader

Magtek is a manufacturer and distributor of blank videocassettes, along with industrial Fuji products.
We custom load to length videotape in the VHS format for industrial and the home video market.

We are writing to oppose the extension of the copyright term for authors and works for hire.

Although we service some the "majors", we also have as a portion of our customer base with many small na mid size componies who utilize material that is in public domain.

These companies are Very important to the growth of our industry. They buy in sufficient volume for our company to be concerned that a change in copyright law will affect the programming they offer, thus creating a slack in this portion of our custome base.

The material that would receive a term extension would in all respects never see video release. We understand this extension will stop the release of many silent films. The viability to release these silent films is a "niche" market, and we can foresee the large corporations who "inherit" the copyrights through extension will leave all but the extremely popular titles stagnant. Large corporations need large rewards for release. These would be considered too " insignificant" or unprofitable. If they are allowed to fall into to public domain, however they would become a usable product for the public domain distributors.

Consumers want this materail, not to mention our Education system wants this material available to them. It would be unfair to deny them these films which should be in the public domain.

We respectfully ask the Library of Congress to deny recommendation of the extension.

Best Regards

Ray L. League

186

GENERAL COUNSEL
OF COPYRIGHT

NOV 30 1993

RECEIVED

Comment Letter

RM 93-8

No. 101

Dear Dorothy,

As a life long fan of movies at age 67, I wish to go on record as opposing any attempts to revive the copyrights of any films that are in public domain.

I further oppose any extention, especially 75 years to 95 years.

You have no idea as to the havoc this would wreak on movie fans, such as I.

I have had a recent stroke from which I am recovering, but I get a lot of enjoyment from these movies.

Without reputable suppliers of video cassettes, I for one would be lost.

Respectfully,

W. M. Thomas

Monica Sullivan
14 Blake Street, # 3
San Francisco 94118
415-387-1037

Attention: Dorothy Schrader
General Counsel, Copyright Office
Library of Congress, Department 100
Washington, D.C. 20540
FAX #: 202-707-8366

Re: DOCKET NO. RM 93-8

24 November, 1993

Dear Ms. Schrader:

I am deeply opposed to the proposal to extend the copyright for works for hire from 75 years to 95 years. I am even more adamantly opposed to ANY attempts to 'revive' the copyright of films that are ALREADY in the public domain.

Neither proposal will 'protect' the original copyright holders, many of whom have or will have long since died (as well as their direct descendants) by the time a copyright term of 95 years expire. All these proposals will do is increase the power of the large corporations (and the even larger companies who subsequently purchase them) to keep long-forgotten works out of the public domain for an additional twenty years.

These corporations have no interest in most of these long-forgotten works but they want to 'protect' them all in order to control the few works that might financially benefit them. How can the American people care about our priceless film heritage when the movies for which preservation funds are being sought are not available for them to watch, only disintegrating in studio vaults because the owners can see no compelling financial reason to protect and preserve them? If it were not for the efforts of collectors throughout film history to save movie prints, our knowledge of past film history would be drastically reduced. The big studios which for many years did NOTHING to protect and preserve many of the films in their care, not even renewing their copyrights, are NOW proposing to travel back in time and regain control of the long-lapsed copyrights of these properties.

There is a reason why movie preservation is such a low priority for so many people outside of film scholarship circles. The film scholars are virtually the only ones who have access to these precious flickering images. We can't ALL travel to the Library of Congress to see the deposit copies of the few pioneering films which have escaped the ravages of time over the last century.

Extending the copyright another twenty years (and/or making it retroactive) will not protect the early film pioneers who died broke many years ago. It will not benefit the ever-growing popu-

lation who have only experienced the silent film in a heavily-duplicated format at incorrect projection speeds. The only people the copyright extension will benefit are corporation executives and their legal representatives. I urge you to re-consider the devastating consequences of this legislation.

Thank you.

Monica Sullivan
Monica Sullivan

Steve Rubenstein
STEVE RUBENSTEIN

Copies: Senator Dennis DeConcini
Rep. William J. Hughes
Senators Dianne Feinstein/Barbara Boxer
Greg Luce
David Pierce

Comment Letter

RM 93-8

No. 103

Dear Mr. Schrader,

... Am writing to express my opposition to the proposal* to extend the copyright for motion pictures from 75 to 95 years. I also oppose any attempt to revive the copyrights of films already in the public domain. Thank you.

GENERAL COUNSEL
OF COPYRIGHT

NOV 30 1993

RECEIVED

S.A.M. SEVERN
SNOHOMISH WASHINGTON

*DOCKET NO. RM 93-8.

19

Comment Letter
RM 93-6
104

DEAR MS. SCHRADER [illegible]

THIS LETTER [illegible] TO

DOCKET [illegible]

MY NAME [illegible] SON OF

COPY RIGHT [illegible] 95 YEARS

AND THE [illegible] FILMS

THAT ARE [illegible]

WITH [illegible] WANT

FILMS [illegible]

WHO HAS [illegible]

I DO NOT [illegible]

THE [illegible]

THE [illegible]

191

Dear Ms. [illegible]

I'm against any change in the copyright laws as it would make many good or rare films unavailable to the general public.

GENERAL COUNSEL OF COPYRIGHT

NOV 30 1993

RECEIVED

Thank You
Paul Ragsdale
Maplewood Village
Lot 58
Marion IN
46953

Comment Letter

RM 93-8

No. 105

Nov. 25, 1993.

Dear Madam:

I am writing as a movie videotape collector to express my opposition to the proposal (Docket #RM 93-8) to extend film copyrights from 75 to 95 years. The only purpose of such an extension is to benefit a few large companies by withholding films from the public domain. There can be no public benefit by allowing them to profit further from works which they had no hand in creating in the first place, and which for the most part have long since been abandoned by their original creators

I hope that you will also oppose any proposed attempt in the future to rob the consumer by allowing the reestablishment of copyright of films and other works already in the public domain.

Thank you for your consideration,

Robert Campbell
490 Broad St.
Weymouth, MA 02188-4

Copies to:
Senator Dennis DeConcini; Subcommittee on Patents, Copyrights, and Trademarks
Rep. William Hughes; Subcommittee on Intellectual Property and Judicial Administration
Senator Edward Kennedy
Senator John Kerry
Rep. Gerry Studds

DOROTHY SCHRADER, GENERAL COUNSEL
COPYRIGHT OFFICE, LIBRARY OF CONGRESS
DEPARTMENT 100, WASHINGTON, DC 20540

11/24/93

I wish to express my opposition to Docket No. RM 93-8- the proposed 20 year extension of copyright for works for hire, such as motion pictures, to 95 years will contribute to the near-complete inaccessibility of a large portion of our motion picture heritage. This proposal should not be submitted to Congress. The reasons inclu
* U.S. copyright extension is not compatible with the European propo
* This is contrary to the purpose of copyright outlined in the Unite States Constitutuin.
* It benefits a handful of large companies, with no public benefit
* These are the same companies that allowed so much of our film heri to be nearly lost in the first place, then donated the survivors to film archives
* Archives have preserved the studio owned titles with Federal funds yet the films are still unavailable
* These films are great educational and historical importance
* Public domain is used to create new works, such as documentaries and educational films

Finally it is these films best interest to be in Public Domain. Turner Entertainment, for one, has displayed no qualms about editing or suppressing films for it's own suspect political motives-such as recent mutilation of such films as 1932's The Mask of Fu Manchu and Rasputin and the Empress. If Docket No. RM 93-8 goes through, how ma years will pass before the original versions of these films are, if ever, available once again to the public? Large companies are interested only in profit, not the Arts nor apparently in freedom of expression.

I also oppose any attempt to revive the copyrights of films that are already in the public domain. What is to stop the political correct thought police currently running rampant in this country fro getting the rights to films they disapprove of such as D.W. Griffit Birth of a Nation or 1952's Invasion USA and effecting their suppre or even complete destruction? To paraphrase Ted Turner's retort to complaining about the colorization of the films in his possession "T are mine now and I can do whatever I want to them." Does Docket No. RM 93-8 address such abuse? I think not.

Public Domain may be the only hope we have for the salvation o America's film heritage. Thank you for your time.

James Janis
14 Pine str
Malverne, NY 11565

GENERAL COUNSEL
OF COPYRIGHT

NOV 30 1993

RECEIVED

1331 N. Lotta Dr
Los Angeles, Calif.
90063

November 20, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100, Washington, D.C. 20540

Comment Letter
RM 93-8
No. 108

Dear Ms Schrader,

I am writing you about Docket No. RM93-8.

Apparently, you are considering extending copyrig[ht]
protection for films from 75 years to 95 years.

I question the need for this extension. The
original companies that produced the out of
copyright films have either gone out of business
or are now owned by someone else.

If the current "Republic Pictures" took the o[ld]
"Republic Pictures" only remaining negatives and proved
that they did massive restoration, then the resto[red]
version should qualify for a new copyright fr[om]
ground zero. Example: A colorized "Sunset in the [illegible]
with Roy Rogers.

Since big business usually gets its way, this [illegible]
alternate idea they would understand. Let the 75 [illegible]
stand. Charge a very very high renual fee for [illegible]
additional 20 years. The government, hence t[he]
people would benefit. It will have to be a very [illegible]

Sincerely
David Gillespie

Dave Gillespie
1331 N. Lotta Drive
Los Angeles, CA 90063

A.H. ARNOLD

700 COOPER ROAD JORDAN, NEW YORK 13080

November 23, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100, Washington, D.C. 20540

Re: Docket No. RM 93-8

Dear General Counsel Schrader:

I am writing to express my opposition of the proposed extension of copyright for works for hire, such as motion pictures, from 75 to 95 years. The extension is contrary to the purpose outlined in the U.S. Constitution, and is not compatible with the extension proposed by the European Community. It would benefit a handful of large companies and prevent access by the public to numerous works of art. These companies that would benefit with virtually no effort on their part, could keep unavailable for screening, films preserved by public funds.

I am also opposed to any attempt to revive the copyright of films that are already in the public domain.

Sincerely

Albert H Arnold

1660 Broad Street
Cranston, RI 02905-2736
November 26, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader,

I would like to strongly protest consideration of Docket No. RM 93-8. I believe that this extension of the current copyright laws will serve only the major film and audio recording distributors. It has been the public's experience to date that these distributors tend to restrict circulation of these older films and sound recordings, releasing them only when they believe that a substantial profit can be made.

This extension represents another example of a governmental agency working against the best interests of the public that it is there to serve. I believe that the current copyright law allows for adequate profit for both the creator and original manufacturer or distributor of these works.

I hope I can count on your support to insure that this attempt to deprive the public of classic works is defeated.

Sincerely,

Wayne R. Haigh

Wayne R. Haigh

197

7811 Rimbley Rd.

St. Paul, MN 55125

Nov. 24, 1993

Dorothy Schrader, General Counsel

Copyright Office, Library of Congress, Department 100

Washington, DC 20540

Dear Ms. Schrader,

Please do not submit to Congress the proposed 20 year extension of copyrights for works for hire, in particular films, for the following reasons. The US copyright extension is not compatible with the 70 year European proposal. The owners give nothing in return for this extra copyright protection such as not being obligated to preserve their films, restore the directors' cut of films, or make them widely available. Extending the copyright will continue to keep films abandon but still protected by copright. The extension is contrary to the US Constitution to promote useful arts by securing for limited times to artists. This extension and copyright retroactivity of public domain films will result in a legal quandary and infringe on historical and educational uses of them.

Sincerely yours,

[signature]

193

John F. Kennedy High School

CHARLES SALTZMAN - PRINCIPAL

GENERAL COUNSEL
OF COPYRIGHT

NOV 30 1993

RECEIVED

Comment Letter

RM 93-8

No. 112

November 24, 1993

Dorothy Schrader, General Counsel
Copyright Office
Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader:

I am writing to oppose the proposed 20 year extension of copyright for works for hire, such as motion pictures to 95 years. This will result in almost complete inaccessibility of a large portion of our motion picture heritage.

As a teacher of Film History and Film Appreciation in a New York City public high school, I am constantly faced with all-too-small budgets for film rental and puchase. Many excellent films -- some film classics -- are currently in the public domain and, therefore, can be purchased at low cost. The copyright extension proposal would impact significantly on the pool of films from which I am able to choose.

I am firmly against the 20 year extension and urge you to oppose attempts to revise the copyright of films already in the public domain.

Sincerely yours,

Dennis Seuling

Dennis Seuling
English/Communications Department

99 TERRACE VIEW AVENUE • BRONX • NEW YORK • 10463 • 562-5500

199

3337 Fernwood Rd.
Wintersville, OH 4395

Dorothy Schrader, General Counsel
Copyright Office
Library of Congress, Dept. 100
Washington, DC 20540

November 25, 1993

Ms. Schrader:

I am writing in regards to Docket No. RM-93-8. As a collector of classic films I am opposed to extending copyrights from 75 years to 95 years. I also oppose any attempts to revive copyrights on works that have been in the public domain. I urge you to keep our film heritage available to everyone.

Sincerely,
Jeff Bates

ARKANSAS STATE UNIVERSITY

DEPARTMENT OF ENGLISH, PHILOSOPHY
& LANGUAGES
P.O. BOX 1890
STATE UNIVERSITY, ARKANSAS 72467-1890
TELEPHONE 501/972-3043 JONESBORO

23 November 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader:

In reference to Docket No. RM 93-8, I would like to express my opposition to the proposal for extending the copyright for works for hire from 75 to 95 years. This seems to me a needless complication and will have the absurd effects of (1) often restricting reprint rights to the dead and to their descendants who will most likely be ignorant of the fact and thereby unconsciously keep material out of the public domain, and (2) in the case of films, allow them to languish and most likely entirely deteriorate in some vault.

As a scholar who spends much time studying our film heritage, I am shocked that you would consider extending an already over-generous copyright period and keeping technically "lost" films out of the public domain. As it is now, I have some hope of at least seeing some of the early films in my lifetime--with the new law, I will probably never get to see them, nor will the generation after me because the film will have probably rotted away. So, the primary result will be that extending the copyright will in most cases guarantee the destruction of the film!!

No doubt the reasoning behind this is to create a new source of revenue to exploit--and the government hopes to collect fees from the copyright holders who are almost certainly deceased or surviving members of their families who will be difficult and expensive to locate.

This is ridiculous enough, but I also understand that such a law might also include a provision for reviving the

copyrights of films <u>already</u> in the public domain. Half of my film collection is public domain material--will I become a criminal technically? Public domain has a very good rationale behind it, and many works long forgotten by creator and descendents have often achieved recognition only <u>after</u> falling into the public domain.

Needless to say, the greatest beneficiaries of all this will be the film pirates, especially abroad. DON'T SUBMIT THIS PROPOSAL TO CONGRESS WHICH MIGHT ACTUALLY BE DUMB AND MEAN ENOUGH TO PASS IT. It benefits <u>very</u> few and injures <u>all</u> scholars and collectors, like myself, who are the only ones who <u>actually</u> preserve and revive films!

My own thoughts may be emotional, but I am supplying an accurate summary of objections to the proposal, which I have permission to use:

> The proposal should not be submitted to Congress because:
>
> (1) It benefits a few large companies and injures the public
>
> (2) It goes counter to be purpose of copyright outlined in the Constitution
>
> (3) The extension is not compatible with the one proposed by the Europeans
>
> (4) The companies who <u>would</u> benefit have sat upon much of our film heritage until it rotted way forever
>
> (5) Archives which have preserved titles with Federal funds have not made many of these works available to the public
>
> (6) These films have considerable historical and educational significance
>
> (7) Public domain provides a pool of inexpensive material which can be used for the creation of new works, like historical documentaries.

I am sending a version of this letter to everyone I can think of, and I assure you that I will never support any politician or agency which attempts to rob the public of a considerable portion of its heritage of film--the only significant art form created in our otherwise violent and culturally barren century.

With sincerity and determination,

Jerry L. Ball

Jerry L. Ball, PhD

203

UPTON CHRISTIAN, PhD PO Box 57927 Webster, TX 77598

November 24, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress, Dept 100
Washington DC 20540

Re: Docket No. RM 93-8

Dear Counsel Schrader:

Given human life span, the proposed extension of the copyright for works of hire makes no sense. It already covers a body of work for the life span of almost anyone who might be involved.

It only serves to keep the works from wide availability and is contrary to the purpose of the copyright as described in the United States Constitution.

Therefore, I am opposed to any extension of the copyright period.

Sincerely,

Upton Christian

204

GENERAL COUNSEL
OF COPYRIGHT

NOV 30 1993

RECEIVED

Comment Letter

RM 93-8

No. 116

To Whom It May Concern,

This is the first time I've ever written a letter like this, I have to admit I don't know what to say. I guess I should just try to write down what I'm thinking.

I'm a single man on a limited income with a hobby, I love old movies, all kinds; Musicals, comedies, westerns; old TV shows & especially B Sci-Fi Movies.

I started liking Movies in the 60's, (when I was young) when I sat up practically every night waiting for my dad to come home from work, He worked til midnight,

Well, you are probably wondering what all this has to do with Docket No. 93-8, I think older movies should be available at a reasonable price for people on fixed incomes. I've been collecting videos since they've came out (even before I had my own VCR), Buying 2 or 3 a Month from $3.00 to $10.00 apiece. The Large Companies never have them that cheap.

I think this proposal should just be dropped as well as the Mexican rules that were changed with NAFTA.

I fell that every person has a right to see or use any film they want at the right price and some big companies shouldn't contol everything.

Thank You,

Ken Wildebuer

Ken Wildebuer
RR#1 Box 28
New Hartford, Iowa
50660-9708

November 20, 1993

Mrs. Dorothy Schrader, General Councel
Copyright Office, Library of Congress
Department 100, Washington, D.C. 20540

Docket No. RM 93-8

Dear Mrs. Schrader:

It has recently come to my attention that there will be a proposal introduced to Congress within the next several months requesting an extension on the current copyrights for works of hire (films,magazine articles,etc...) from 75 years to 95 years. The same proponents who are pushing this copyright extension are also wanting to restore copyrights of films that have been in public domain for ages!

I believe this to be against the best interest of the multitude of film fans like myself who become acquainted with various works only after their copyrights expire and they enter into public domain. This new proposal will make it next to impossible for classic films to get the public appreciation they deserve. The talents of directors,cinematographers,actors,writers,etc...of may vintage films would lie undiscovered by new,eager audiences if it were not for public domain. These works are part of their legacy and these films should be made easily available to the legion of fans who desire to discover and experience them.

It appears to me that our current copyright laws are already "in-sync" with the European Community. This, I understand, is the main purpose for extending the copyright term. I believe that the real purpose is to benefit several large companies.

Please do all that you can to ensure that this proposal is not submitted to Congress. Help make sure that the copyright laws are not tampered with. I feel that extending the copyrights for works of hire or restoring copyrights on public domain works will do more harm than good in the promotion and appreciation of the creative processes of the country.

Sincerely,

James K. Taylor
218 Second Avenue
Murfreesboro, Tn 37130

Dear Dorothy, November 25, 199

I'm writing to tell you that I am very opposed to Copyright Protection being extended 20 years. I am also opposed to having Copyrights renewed on works that have already fallen into the public domain, because this will have a disasterous effect on our film heritage. Also, Many people have businesses selling public domain films on videotape, this law would hurt them severely.

The biggest effect it will have is that it could cause many hundreds of old films to become "lost" or nonexistant. There are thousands of films in archives slowly deteriorating, many of the films will eventually make it on to video tape or newer film, especially when they fall into the public domain, but if the Copyright is extended it will mean 20 more years of deterioration before it can be put on tape. This will cause many hundreds of films to become nonexistant.

If there is an extension there should be stipulations regarding the movie industry. Most of the major film studios did nothing to preserve the negatives of the films they made. Some ev destroyed their negatives to make room. They also intentionally pu the movies on chaep film that they knew would deteriorate rapidly because they thought that these films had no money making potenti beyond their initial release. These companies that had no regard for the art they created don't deserve extended rights.

Most of the films made prior to 1930 are already nonexistant the reason that any still survive is that archives and collectors took the time to store them in a safe place, if this extension is passed it will surely mean a growing number of lost films.

Thank you very much for taking the time to read this letter.

GENERAL COUNSEL
OF COPYRIGHT
NOV 30 1993
RECEIVED

Comment Letter
RM 93-8
No. 118

Sincerely
John Frick
John Frick
227 Doris Ave
Baltimore, MD 212

GENERAL COUNSEL OF COPYRIGHT

NOV 30 1993

RECEIVED

RM 93-8

No. 119

Stephen H. Donhoff
5831 Tupelo Drive
Sacramento, Ca.
95842

November 22, 1993

re: Docket No. RM 93-8

To whom it may concern:

As a lifelong motion picture enthusiast I would like to make known my strong opposition to the proposal to further extend the copyright on movies ("works for hire") from 75 years to 95 years and the suggestion to revive the copyrights on films already in the public domain. These efforts are misguided, outrageous, and even ridiculous. [illegible] legislation would clearly benefit only a few [illegible] (such as Turner Entertainment and [illegible]) [illegible] the general public (including [illegible]) [illegible] entertained and edified by [illegible] I think I've waited quite long [illegible] of my life actually) and [illegible] (for example) might [illegible] these movies for yet another [illegible] specify that "exclusive rights" [illegible] only "a limited time"? I've [illegible] of copyright is more than [illegible] intended! As to defunct [illegible] say this seems a staggering [illegible] confer grossly unwarranted [illegible] copyrights but would [illegible] possibility of enjoying [illegible] domain. Please do not let [illegible] possible to defeat such [illegible] to unfairly put add[illegible] re-imprison motion pic[illegible] to be free.

GENERAL COUNSEL
OF COPYRIGHT

NOV 30 1993

RECEIVED

Comment Letter

RM 93-8

No. 120

Dear M. Schrader.

My name is Sean McLaskie and I am a registered voter. I am strongly opposed to the proposal to extend the copyright for works for hire from 75 years to 95 years. I am also opposed to any attempts at reviving copyright to films already in the public domain. Specifically, I am refering to Docket No. RM 93-8. If it were not for public domain, I would never have been exposed to some movies considered a classic now, that were a flop initially. For example, IT'S A WONDERFUL LIFE (1946) didn't gain the status that it holds today until it became public domain. In addition, what about all of the documentary and instructional films that rely upon public domain footage? Should we say that only films with enormous budgets be made? because if a student or novice filmmaker is forced to pay the price for copywritten material, he/she better have an enormous budget. If we lose public domain works, we will not only have lost a look at our past, but we may be stifling a piece of our future.

Most sincerely,

Sean McLaskie

Sean McLaskie

GENERAL COUNSEL
OF COPYRIGHT

NOV 30 1993

RECEIVED

Comment Letter

RM 93-8

No. 121

9138 Plaza Par
Elk Grove, Ca
Nov. 20-1993

Dorothy Schrader
General Counsel-
Copyright Office - Library of Congress
Dept. 100 - Washington DC 20540

Dear Ms Schrader -

This is a letter opposing the prop
to extend the copyright for works of
from 75 to 95 years. I feel it necessary
oppose any attempts to revive the
copyright limits of films that are
in public domain.

I take this stand in the interest o
history. a copyright term is limited
the public will not be permantly de
of the fruits of an artists labors.

Sincerely
Keith Gebers

CC Senator Dennis DeConcini
Senator Barbara Boxer
Gregg Luce

Nov 20, 199[illegible]
Docket No. RM 93-[illegible]

Dear Ms. Schrader,

This letter is sent opposing the proposal to extend the Copyright for works for hire from 75 years to 95 years.

I also oppose any attempts to revive the Copy-right of films that are already in the Public Domain. Being a film, music and book fan, this issue is very important to myself and many Others!

Thank you!

Beverly Cloud
8693 Gotham Rd
Garrettsville, Ohio 44231

3526 Boundbrook Lane
Columbia, SC 29206

November 23, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader:

Regarding Docket No. RM 93-8.

I oppose any proposal to extend the time for copyright for works for hire. I also oppose taking films that are now in the public domain and putting them back under copyright. The current 75 year protection is quite adequate to encourage creative work. The proposed copyright extensions would mostly benefit speculators who have purchased rights to old works in the hope of realizing a windfall from a change in the law. It would hurt legitimate collectors and students of film history.

Please uphold the Constitution's intent on copyrights.

Yours,

Samuel L. Baker

Samuel L. Baker

cc: David Pierce
Laurel, MD

LES HAMMER

125 North Allen #104 • Pasadena, California 91106 • Telephone (818) 578-0714

Comment Letter

RM 93-8

No. 124

November 20, 1993

Dorothy Schrader, General Counsel
Copyright Office. Library of Congress
Department 100. Washington, DC. 20540

Dear Miss Schrader:

This letter constitutes my stated opposition to the proposal to extend the copyright for works for hire from 75 years to 95 years.

As a historian and writer, I appreciate the reasons for creators and their heirs to enjoy the perpetual rights and royalties of artistic works. But public interest and need outweigh those considerations.

As historian for the late Ralph Faulkner and Falcon Studios in Hollywood, I experience much regret over the loss and neglect of early American films, which he appeared in. I resent the inaccessibility of the surviving movies, held by archives and studios.

In my own research, I rely more on private collectors and dealers who, in most cases, have taken better care of their assets than the corporate and studio interests that would like copyright protection for 95 years or (if they could get it) forever.

Please note that I oppose any extension of copyright law to 95 years and any proposal to bring works in public domain back under copyright protection.

Most sincerely,

Les Hammer

Les Hammer

2

WB

Walter Brooksbank
architect

1707 madison avenue
memphis tn. 38104

901·276·8022

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

11-18-93

Ref: Docket No. RM 93-8

Dorothy Schrader:

I am writing to oppose extending the copyright for works for hire from 75 to 95 years. I also oppose any attempts to revive the copyrights of films that are already in public domain.

Thank you for your time and assistance on this matter.

Sincerely,

Walter Brooksbank, Architect

WB/lg

cc: Senator Dennis DeConcini, Chairman
Subcommittee on Patients, Copyrights and Trademarks

Rep. Willaim J Hughes, Chairman
Subcommittee on Intellectual Property and Judicial Administration

David Pierce

TO - DOROTHY SCHRADER, GENERAL COUNEL
COPYRIGHT OFFICE, LIBRARY OF CONGRESS
DEPARTMENT 100, WASHINGTON, DC 20540.

MY NAME IS JAMES TITTERMARY, I AM
WRITING TO YOU OPPOSING TO EXTEND THE COPYRI
FOR WORKS FOR HIRE FROM 75YRS TO 95YRS. I
DO NOT THINK THERE IS ANY NEED TO REVIV
COPYRIGHTS OF FILMS ALREADY IN THE PUBLIC DO
THE ONLY REASON MANY FILM'S ARE STILL WI
US IS BECAUSE OF THEIR PUBLIC DOMAIN STA
IT MADE THIS MATERIAL AVAILABLE TO PEOPLE
TRULY CARE ABOUT THE RESTORATION OF FILM.
-STORING FILM WAS NOT STARTED BY AMC OR
AMERICAN FILM INSTITUTE AND IT WAS NOT ST
BY THE STUDIO'S, RESTORING FILM'S WAS FIRS
STARTED BY PRIVATE COLLECTOR'S WHO DID NO
WANT TO SEE THEIR FILM HERITAGE TURN TO
IN SOME CLOSET OR WAREHOUSE. THE ONLY P
WHO WANT COPYRIGHTS EXTENDED ARE STUDI
CARE FOR NOTHING BUT MAKING A COUPLE
DECADOS OF PROFIT'S, AND MANY FILMS THA
STUDIO'S CONSIDER UNPROFITABLE WILL JUST
AND COLLECT DUST OR MAYBE WILL BE DEST
I URGE YOU NOT TO PASS DOCKET NO. RM
U.S. COPYRIGHT EXETENSION IS NOT COMPATA
THE EUROPEAN PROPOSAL. EXTENDING THE COP
WILL ONLY BENEFIT A HANDFUL OF LARGE
AND THE PUBLIC WILL NOT BENFIT FROM
ARCHIVES THAT DO PRESERVE STUDIO OW
TITLES DO THIS WITH FEDERAL FUNDS, "O
BUT MANY OF THESE FILM'S HAVE YET

made Available To The public. public Domain is important To creativity and Fairness. Back in The 1920's & 30's many Film's were alowd To Turn To Dust By Studio's who Thought These Film's were u -less and worthless, many of These Film's a gone Forever, never To Be seen again, Lon Chaney's "London After midnight". These Film's were made on Nitrate Film and a year's of neglect By studio's were piles Dust in some warehouse. The only Thing extending copyrights will Do is To Let man more Film's Die of neglect. I urge y not To Let This Happen, please Do not Let our Film Heritage sit and Die in some warehouse.

Thank you For your Time.
Sincerely
James L. Tittermary
103-20W Shrewsbury Dr.
Tuckerton, N.J. 08087.

November 22, 1993

Dorothy Schrader
General Counsel
Copyright Office
Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader:

As a student of silent film and American history in general, I would like to register my vigorous objection to the proposed 20-year extension of copyright for works for hire from 75 to 95 years (Docket No. RM 93-8). Such an extension would serve no public interest, but would merely reward large corporations who allowed the American film heritage to decay during the decades in which their ownership was protected by copyright. The extension would in fact penalize the public by continuing to restrict the exhibition of films that have been restored through public expenditure, but would be considered copyright-protected private property!

I also strongly oppose any schemes to revive the copyrights of films that are already in the public domain for the same reasons indicated above. The grand strategy of copyrighting our entire national film heritage is contrary to any rational purpose for copyright as conceived by the Constitution, thus does not even deserve consideration by Congress. However, because I understand that the proposal may indeed find its way to Congress, I am sending a copy of this letter to my representatives and to relevant Senate and House committee chairs.

Sincerely,
Bryan Smith
Bryan Smith
4173 Fair Ave. #2
Studio City, CA 91602

cc: Senator Barbara Boxer
Senator Diane Feinstein
Rep. Howard Berman
Senator Dennis DeConcini
Rep. William J. Hughes

AMERICAN INDEPENDENT PRODUCTIONS, INC.
P.O. Box 1901, Hollywood, CA 90078 (818) 995-6610/(818) 995-6639 FAX

NOVEMBER 23, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100, Washington, DC 20540

Dear DOROTHY SCHRADER,

Once again I am compelled to write you concerning the on-going business of copyrights in the motion picture industry - Docket No. RM 93-8.

The idea of extending copyrights on "works for hire", such as motion pictures, from 75 to 95 years has no positive aspects to recommend it.

As a filmmaker I think I can speak plainly from our side of the fence. I, myself, own a library of my own work and I hold the copyrights on these films. Technically I am the person (along with my heirs) who would most benefit from such an alteration in the existing laws, but I beg to differ with you.

What I want most of all is that my work not be lost as the years creep by. To me (and most filmmakers I'm sure) that would be the greatest injustice. Beyond being a professional I am also an artist and if anything should come into being that would prevent my work from being available to the widest possible audience I think my work would have been defeated.

However, I am not implying that I do not personally want to prosper from my work - I am prospering, but 75 years from now I certainly hope that somebody still wants to distribute my films and that somebody wants to see them.

It worries me that some distant relative of mine (who most likely I will never meet in my lifetime) will have the power, the oversight, or just the lack of giving a damn, to keep what I've spent my life creating away from the people I truly created it for.

Please give this matter some serious thought. I know what I'm talking about. I don't think I'd have had my own career if I had been denied access to the great low-budget pictures of the 1940s - now available only through Public Domain sources. The films and their makers were a constant source of inspiration to me and continue to be so.

I want the chance to be a part of that film history for future filmmakers and other interested parties.

Sincerely,

FRED OLEN RAY, Ph.D.

217

Peter W. Many, Jr.
1321 Calhoun Street
New Orleans, LA 70118
(504) 897-0139

November 24, 1933

Dorothy Schrader, General Counsel
Copyright Office
Library of Congress, Department 100
Washington, DC 20540

Dear Ms. Schrader:

RE: Docket No. RM 93-8

I'm writing to express my opposition to the Copyright Extension Proposal regarding "Work for Hire" (motion pictures, etc.).

Such an extension could hardly benefit copyright owners who've either abandonded the material or long since died, and it would be very unfair to film audiences who would no longer have access to much of our film heritage.

Thank you for your consideration.

Very truly yours,

Peter W. Many, Jr.

Peter W. Many, Jr.

CC: Senator Dennis DeConcini
Rep. William J. Hughes
Senator John Breaux
Senator Bennett Johnston
Mr. Greg Luce

CLAYPOINT
PRODUCTIONS

November 24, 1993

Dorothy Schrader
General Counsel
Copyright Office
Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader:

Recently we have become aware of a proposal by your office to extend the copyright term for motion pictures and other work for hire to 95 years. As producers of documentaries for over fifteen years, we are strongly opposed to such an extension, not only because it makes our job of creating new and innovative documentary programs more difficult and more costly but also because it denies all of us the opportunity to see and enjoy these educational and historically important films.

In our opinion, seventy-five years is more than sufficient time for those involved in the creation of motion pictures to obtain ample compensation for their work. It is already five years longer than the 70 year copy right term used in Europe. Extending this time another twenty years will only benefit a handful of people while the rest of us will lose especially if any of these valuable works are damaged or destroyed due to inadequate storage and indifference.

We would add that we are also opposed to any attempts to revive the copyright of films already in the public domain as this would have catastrophic consequences for educational and documentary works in which such materials are already incorporated.

I encourage you to do all you can to forestall either of these proposals.

Sincerely,

Katherine Carpenter
Senior Producer

Richard O'Regan
Senior Producer

53 LEONARD STREET • NEW YORK, N.Y. 10013 • (212) 941-6030 FAX (212) 941-6045

NOV. 23, 199

Dorothy Schrader, General Counsel;

I am writing this letter to say that I oppose the proposal to extend the copyright for works for hire from 75 years to 95 years. I am a great american lover of classic film and I oppose any attempts to revive the copyrights of films that are already in the public domain. I am refering to DOCKET NO. RM93 This proposal should not be submitted to Congress.

Sincerely,

Anthony Olivieri

ANTHONY OLIVIERI
160-24 92ND STREET
JAMAICA, NY 11414

Dorothy Schrader, General Ccunsel
Copyright Office, Library of Congress
Dept. 100 Washington, D.C.

Nov. 23, 1993

Dear Ms. Schrader,

I am writing to express concern over the future of copyright status in this country. I refer specifically to Docket No. RM 93-8. I am adamantly opposed to any tampering with the current copyright laws as well as any proposals to reinstate, retroactively, expired copyrights. The latter proposal, in particular, is utterly absurd.

Copyright exists for a very good reason - to protect the rights of the creator of a piece of artistic expression. There are rather obvious economic reasons for the protections which currently exist. However, after a certain period of time, a REASONABLE period of time, the public good overtakes whatever last possible penny might be wrung out of any individual piece of work. The U.S. Constitution grants protection for a "limited time". After this reasonable, limited period of time, the work becomes available for dissemination to a greater portion of the public. As well it should.

Countless works of creative expression have passed into oblivion due to either the negligence or outright greed on the part of original copyright owners. I refer specifically to motion pictures. Half the films produced prior to the industry conversion to safety stock in the 1950's have vanished! The classic horror story was Universal Pictures' decision to destroy their silent catalog in 1948, when the studio was taken over by new management. The films were viewed as worthless inventory. Tell that to the film preservationists who have scrambled to piece together the best remaining elements of "Phantom of the Opera" from 1925, so a decent print could be created for laserdisc release!

A handful of large corporations cannot be allowed to control the availability of works constituting one of the most powerful means of expression ever devised. Many films have only come to be fully appreciated after they became public domain. To allow more to vanish is positively unconscionable. I call on you to preserve the public's right of accessibility.

Sincerely,

Charles Hess

Nov. 23, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader,

I am writing as a concerned citizen urging you to take steps to oppose Docket No. RM 93-8, the Copyright extension proposal. The proposal may appear to benefit creators of film, fiction and music, but will in reality benefit a handful of large companies which control the works of art at the extreme expense to the public. This country was founded with the ideal that we would have great freedom of choice as citizens, and the proposed laws will limit that choice by allowing thousands (millions?) of works of art to fall into obscurity through neglect and disinterest on the part of individual owners, when they may remain of interest to the public. The proposal is not compatible with the current European proposal, and is contrary to the purpose of copyright outlined in the US Constitution. We do not want works of art, great, important and otherwise, to be sitting in archives for years when the general public can be using them for entertainment and education. We have lost countless films to obscurity already. Additionally, the use of public domain allows new works, such as documentaries and educational films, to be produced by those most apt to do so.

Additionally, I urge you to oppose the further proposal to revive copyrights of films that are already in the public domain. We do not want films of educational and historical importance taken from us! Thank you for your concern.

Sincerely,

Aaron Milenski

c.c. Senator Dennis DeConcini, Rep. William J. Hughes, Greg Luce

Comment Letter

RM 93-8

No. 134

22v

Nov 23, 1993

Dear Dorothy Schrader,

I'm writing to state my opposition To The possible extension of The Copyright law to 95 yrs as well as on public domain films.

To restrict the accessability of films In anyway is to deny The general public the right to enjoy The varied artistic creations of The single greatest art form of our time. I hope This will not happen.

- also - The exclusion of "Birth of a Nation" from the celebration of "Cinema history series" is insulting not only to Mr. Griffith and his Legacy - by to film Art itself.

Thank you for your time

Richard M Johnson

GENERAL COUNSEL OF COPYRIGHT

NOV 30 1993

RECEIVED

Robert Shepherd
129 Highfields Road
Abington, MA 02351

Nov. 23 199

Dorothy Schrader, General Counsel
Copyright Office
Library of Congress - Dept. 100
Washington D.C. 20540

Dear Ms. Schrader:

I'm writing to voice my opposition for the proposal (Docket No. RM93-8) to extend copyrights for 'works for hire' from 75 to 95 years. It is contrary to what the U.S. Constitution outlines on the purpose of copyright; the only benefactors if this proposal is passed would be the handful of large companies who by carelessness are responsible for much of this nation's motion picture and recorded musical heritage to be nearly lost.

This proposal would not be in the best interests of the American public.

Yours truly,

Robert Shepherd

Robert Shepherd

Wright State University

Department of Theatre Ar
Dayton, Ohio 45435
513/873-3072
FAX 513/873-3787

24 November 1993

Ms. Dorothy Schrader, Esquire, General Counsel
United States Copyright Office
Library of Congress
Department 100
Washington, D. C. 20540

Dear Ms. Schrader:

The Society for Cinema Studies requests that the Copyright Office consider the Society's views during the Office's deliberations on Docket Number RM 93-8, a proposal to extend the copyrights for works of hire from seventy-five years to ninety-five years and to resurrect the copyrights of works currently in the public domain.

The Society for Cinema Studies is the leading organization, both nationally and internationally, devoted to the scholarly study, both theoretical and historical, of the film, television, and video media. With a membership of over one-thousand, the Society's ranks are comprised of the discipline's leading scholars. The Society publishes, under the auspices of the University of Texas Press, Cinema Journal, a refereed quarterly devoted to cutting-edge media scholarship. Through its various committees, the Society takes an active role in matters pertaining to film preservation, research, and pedagogy. Given the Society's commitment to film education, which is the foundation of the Society's mission, and its vital interest in preserving our nation's film heritage, which is manifestly important to that mission, the Society for Cinema Studies is obligated to voice its dismay about aspects of the revisions to the current copyright law proposed in Docket Number RM 93-8.

If copyright protection is extended another twenty years, there is little doubt that much of the entire output of the American film industry during, perhaps, its most fertile period, from the end of World War I until the advent of sound films in the late 1920s, will remain unseen by the general public and, especially, film students, for yet another two decades. Current copyright holders of these films, believing there exists no economic incentive for the films' release, have effectively withheld them from distribution, preventing their classroom use and, aside from those relatively few prints in archives for which copyright holder permission can be secured for viewing, preventing their study by film scholars. Film archives in themselves provide no solution, since most university film programs are located far away from major archives, while the costs and time involved in traveling to archives are often beyond the resources of most scholars. And, since the current copyright holders are not now receiving any financial return on these films, why should the films not enter the public domain? Without release to the public domain, these films will for another twenty years be unavailable to film students and film scholars, as well as the public at large.

22

Perhaps a graver threat the Society sees to revisions in the current copyright law is the possibility that films currently in the public domain may revert to copyright protection. The Society foresees that not only will a substantial portion of the nation's motion picture heritage remain hidden from view from students and scholars, as discussed above, but that precisely those films which today serve as the backbone of film study, films in public domain and distributed by independent entrepreneurs serving the educational market, will disappear, as well. These distributors have done the public and film education a great service by preserving these films and making them available at reasonable prices to colleges and universities for classroom use. If the resurrection of copyrights for these films is granted, the Society envisions myriad court battles fought to acquire copyright, keeping many films from distribution while litigation proceeds; many of the currently available public domain titles disappearing from circulation because larger distributors may not believe the academic market warrants the cost of their release; and, especially, the prices of those recopyrighted films that do reach distribution being well beyond the already receding budgets of academic film programs. Should the copyrights of these films be resurrected, the discipline of film studies faces the bleak prospect of having virtually no substantial body of work with which to teach or study the evolution of one of the nation's most visible and popular artistic and cultural products, a situation analogous to attempting to teach and study the breadth of American literature with just a handful of available books.

The Society for Cinema Studies is apprehensive that proposals to extend the copyright of currently protected works and the resurrection of copyright for works currently in the public domain will seriously and adversely affect the course and progress of film scholarship and teaching in this country. The Society asks the Copyright Office and Congress to consider carefully the effect the contemplated revisions to copyright law will have upon the academic study of the film medium, and to act in such a manner as to protect the interests of a group that holds no economic stake in this matter, but which does stand to lose the opportunity to study and to communicate to students, especially our future filmmakers, the aesthetic and cultural richness of America's film legacy.

Thank you for considering the Society's views.

Sincerely,

VW[signature]

Dr. Virginia Wright Wexman, President,
Society for Cinema Studies,
University of Illinois-Chicago

[signature]

Dr. William Lafferty, Chair, Permanent
Committee on Access of Film,
Radio, and Video/Television
Materials for Research and
Classroom Use, Society for
Cinema Studies, Wright State
University

To whom it may concern;
Please do not extend the copyright for works for hire from 75 to 95 yrs.
Any attempt to revive the copyrights that are now in the public Domain, will deprive our children of the joy of discovering how movies were made, as well as how they have changed. We need the old movies to remind us now - about how good & enjoyable they should be.

Sincerely,
Carl Sperduto

GENERAL COUNSEL OF COPYRIGHT
NOV 30
RECEIVED

Comment Letter
RM 93-8
No. 137

The Mob Cap, c. 1900

In reference to Docket No. RM-93-8 I feel it unnecessary to extend the copyright for works for hire from 75 to 95 years and unfair to attempt to revive the copyrights of films that are already in the Public Domain. Thank you for your consideration.

Richard Branch
812 E. Gulf Blvd. #2
Indian Rocks Beach
Florida 34635

A Book of 30 Postcards · Magna Books

Comment Letter
RM 93-8
No. 138

Dorothy Schrader
General Counsel
Copyright office
Library of Congress
Dept. 100
Washington D.C. 20540

GENERAL COUNSEL OF COPYRIGHT
NOV 30 1993
RECEIVED

23 November 1993

TO: Dorothy Schrader, General Counsel
Copyright Office, Library Of Congress
Department 100, Washington, D.C 20540

FROM: Robert J. Sales
13449 N. Warfield Circle
Marana, Arizona 85653

Dr Ms. Schrader:

Please be advised that I "Oppose" the proposal to extend the copyright for works for hire from 75 years to 95 years.

Further I "Oppose" any attempts to revive the copyrights of films that are already in the public domain.

As a viewer and collector I oppose the above as these films are of great educational and historical importance. A change in the existing laws would make many films unavailable to me in my life time. Many old films have been lost due to improper storage and handling and will fade from the scene if not allowed to be restored and reproduced.

Thank you

Robert J. Sales
(602) 682-9053

24 NOV 93

DOROTHY SCHRADER
GENERAL COUNSEL
COPYRIGHT OFFICE,
LIBRARY OF CONGRESS
DEPT. 100
WASHINGTON, D.C.
20540

DEAR MS. SCHRADER,

I AM WRITING THIS LETTER TO OPPOSE THE PROPOSAL TO EXTEND THE COPYRIGHT FOR WORKS FOR HIRE FROM 75 YEARS TO 95 YEARS. AND I OPPOSE ANY ATTEMPTS TO REVIVE THE COPYRIGHTS OF FILMS THAT ARE ALREADY IN THE PUBLIC DOMAIN. I appreciate your help and concern in this matter.

Sincerely,

Claude Ford

1496 Raymond Avenue
St. Paul, MN 55108-1433
November 22, 1993

Dorothy Schrader, General Counsel
Copyright Office
Library of Congress, Department 100
Washington, DC 20540

Dear Ms. Schrader:

I urge you to oppose the proposed extension of copyright from 75 years to 95 years for works-for-hire (Docket No. RM 93-8), as well as any proposal to rescussitate the copyright for works already in public domain.

Copyright protection is limited in time under the Constitution so that dissemination of copyrighted materials will not be. Some perennielly popular works continue to repay the investment of copyright-owning conglomerates in keeping a work before the public for long periods. But many thousands more lie neglected and dormant after an initial spate of interest because a small, core audience of scholars or aficianados cannot support large-scale distribution. Only after copyright on these otherwise "lost" works has expired can inexpensive and/or minuscule editions, aimed at these core audiences, be issued by small, private companies, or freely used in scholarly or educational works.

If it were up to me, copyright for work-for-hire would expire after 35 years and be renewable for another 35 only on the condition that the copyright holder actually undertake to keep the work readily available to the public. To make such copyrights virtually perpetual—and retroactively, no less!—when works are being "sat upon" by their owners may seem reasonable with respect to perenniel backlist titles, but the cost to the public in lost access to the vast majority of copyrighted works-for-hire by far outweighs the benefits of an across-the-board extension.

Sincerely,

Jeffrey P. Fruen

Jeffrey P. Fruen

The Heathman Bakery & Pub features oil paintings by French caricaturist B. Moloch.
These works originally hung in a Paris brasserie at the turn of the century.

11.23.93

Re: Docket # RM 93-8

Dear Counselor Schrader,

As a film-goer, I am writing in opposition to the proposal to extend the copyright for works for hire from 75 years to 95 years or to revive the copyrights of films already in the public domain. The current copyright term is fair to both artist and audience.

Sincerely,

Justin Hoffman-Kerr, 031 SW Caruthers, Portland, OR 97201

General Counsel
Dorothy Schrad
Copyright Offi
Library of Congr
Dept 100
Washington DC
20

901 SW Salmon Street Portland, Oregon 97205 USA
Two blocks from the historic Heathman Hotel.

Photography: John Rizzo & Matt Cooper Graphic Design:

2

November 24 1993

Dorothy Schrader
General Council
Copyright Office
Library Of Congress
Department 100
Washington
DC 20540

Ms Schrader

I am opposed to the current proposal to extend the copyright term. The stated purpose is to bring the United States " in sync " with the European Community, which has proposed but not yet adopted a copyright term for works by individuals of " life plus 70. " The proponents of " life plus 70 " also propose extending the U.S. term for " works for hire " such as motion pictures, from the current 75 years to 95 years.

The current 75 year term for works for hire in the U. S. is already longer than the proposed 70 year term for the European Community. The current term for motion pictures in most European countries is 50 years.

The other plan to restore the copyrights of films that have been in the public domain for up to fifty years is horrendous. This would include such classics as Douglas Fairbanks' THE MARK OF ZORRO (1920) and Buster Keaton's THE GENERAL. (1927) Taken together, term extension and copyright retroactively would bring Edwin S. Porter's THE GREAT TRAIN ROBBERY (1903) back under copyright protection!

What is the justification to extend the copyright law on motion pictures?

The proposal to extend to 95 years would have an immediate effect on the decade of films copyrighted from 1918 to 1927, the SILENT era, and with only a handful of exceptions, these films can only be seen at archives and foreign film festivals. Virtually all of the copyrighted survivors of the SILENT film history remain on the shelf, unseen in the classroom, video store or on television or cable. Thousands of nearly forgotten American films are awaiting the freedom of public domain. For many more, public domain is meaningless because their makers lost all copies due to poor storage and neglect. In fact, a 1993 study by the Library Of Congress documents how the vast majority of films from the silent era have been lost forever due to ownership apathy.

Extending the current term of copyright will guarantee that the public will continue to be deprived of hundreds of films, long abandoned by their creators, but still protected by copyright. What opportunity does the public have to see Frank Borzage's romantic masterpiece LUCKY STAR (1929), recently restored from a print found in Europe?

As proposed, the owners of these copyrights do nothing in return for this extra copyright protection. They assume no obligation to preserve their films, making them available, or even grant permission for archive screening. WHERE IS THE PUBLIC BENEFIT?

I have been a SILENT film buff for over 50 years and as a youngster i had a hand cranked film projector to screen 50 foot reels of films that were blurry and scratched. Years later i used to rent KODASCOPE films and the hope of ever owning a film was beyond my imagination. After WW2 and the 8mm projector i was able to purchase scratchy, poor prints and i used to read about collectors and distributors who were pursued by the authorities for selling lousy dupes of films long forgotten by the general public.

The big change came with the VCR. Kodak manufactured and sold a machine to transfer film to video tape and the gates of heaven opened up about ten years ago. Anyone who had a scratchy film was able to make a copy and sell a title that had been beyond ones imagination to ever own. At the peak of my 8mm and 16mm collecting i accumulated about 50 films over a 40 year span. I now have about 500 SILENT films and the quality of about 75 per cent of them is just viewable. During the video tape era the major film studios that have some of the surviving, excellent prints of the SILENT'S has issued for sale a dozen or so films.

The PATENT on a machine, medicine or, a mouse trap is only 17 years.

The public policy of this country has always been to provide limited protection for a finite term and then have the creative works fall into public domain for the widest possible dissemination. Public domain is an integral part of the creative process, and the courts have been consistent in recognizing this. In Stewart v. Abend, a landmark 1989 copyright case, the Supreme Court noted that copyright serves a higher purpose than just providing income for authors and creators.

I review Silent films for Classic Images and The Silent Newsletter, two periodical's devoted to SILENT films.

Sincerly

John DeBartolo
137-11 246 Street
Rosedale
NY 11422

904 Pocahontas Dr.
Ft. Washington, MD 20
Nov 23, 1993

Dorothy Schrader, General Counsel
Copyright Office
Library of Congress, Dept. 100
Washington, D.C 20504

Dear Ms. Schrader:

I oppose the propose to extend the copyright for works for hire from 75 to 95 years. As a recipient of royalties, I oppose this extension even beyond 34 years. Works should go into the public domain naturally.

I especially oppose attempts to revive copyrights on films already in the public domain. Why in the world should relatives of the creators benefit from the creators work ad infinitum.

Sincerely yours,
Edward D. Palik

SENT BY:
ARCHIVE FILMS · ARCHIVE PHOTOS · 12- 2-93 ; 10:06 ; ARCHIVE PRODUCTIONS · ARCHIVE FILMS INC.→ CELEBRITY CLEARANCE SERVICE · 202 707 8366;# 2/ 2 FILM/IMAGES LTD. (U.K.)

ARCHIVE MUSIC · ARCHIVE NEW MEDIA

23

ARCHIVE HOLDINGS, INC.

November 30, 1993

GENERAL COUNSEL OF COPYRIGHT
DEC 2 1993
RECEIVED

Comment Letter
RM 93-8
No. 145

Dorothy Schrader
General Counsel
Copyright Office
Library of Congress
Department 100
Washington, DC 20540

Dear Dorothy:

RE: Docket No. RM 93-8

I'm writing to express my opposition to the current attempts before Congress to extend the term of copyright protection by an additional twenty-years and to retroactively restore copyrights that have already fallen into the public domain.

One of the underlying principles of copyright law is that a creator agrees to give up exclusive control over his work in return for a fixed term of protection. Current law gives and individual author life plus 50 years and 75 years for works for hire, more than ample time for a creator or corporation to realize a considerable profit from their labors. Up to this point many works have already fallen into the public domain, with no appreciable effect on creators as a whole, while the free availability of these works has been of great benefit to the public.

I urge you to vote against these revisions.

Sincerely,

Patrick Montgomery
President

530 WEST 25TH STREET NEW YORK, NEW YORK 10001 212/620/3955 FAX 212/645/2137

237

Dec. 2, 1993
Knoxville, TN

4760 COSTER ROAD
P.O. BOX 12642
KNOXVILLE, TN 37912
(615) 688-0431
FAX (615) 687-4233

Dorothy Schrader
General Counsel
Library of Congress
Dept. 100
Washington, DC 20540

Dear Ms. Schrader:

As a purveyor of film I am appalled by the proposed 20 year extension of copyright for works for hire, such as motion pictures, to 95 years. This proposal should not be submitted to Congress. The ironic fact that the U.S. copyright extension is non-compatible with the European proposal is skewed logic. The current 75-year term for works for hire in the US. is already longer than the 70-year term for such works which has been proposed in the European Community!

This proposal is contrary to the purpose of copyright outlined in the U.S. Constitution and only benefits a small group of large companies, with no public benefit. These are the same monolithic entities that allowed so much of our film heritage to be lost in the first place (half the films made before 1950 have disintegrated because distributors neglected to strike new prints on better stock).

Archives have preserved the studio-owned titles with Federal funds, yet the films are still unavailable. It is paramount legislators understand the great historical and educational significance of these works. The proposed 95-year copyright term would be catastrophic for aficionados of classic cinema, ensuring that many films would be experienced not by the audiences they deserve, but secondhand through articles in scholarly journals.

Whether you toss aside the feelings of film fans every where or not, please think for a moment about the ramifications this law will have on public domain films. The new works these films have helped create, documentaries and educational films, will butcher a tapestry of memories that has been woven into the fabric of every American's life. The prospect of having to clear or eliminate public domain footage from thousands of already produced documentaries and educational films is utterly staggering.

Certainly there is more pending legislation than putting the ball back in the court of the same folks who lost so many of our early cinematic efforts due to ownership apathy. Where is the public benefit! Think about it.

Sincerely,

Tommy Gibbons

Tommy Gibbons

238

MACDONALD & ASSOCIATES
5660 N. JERSEY AVENUE
CHICAGO, IL 60659-3694
TEL (312) 267-9899
FAX (312) 267-

GENERAL COUNSEL
OF COPYRIGHT

DEC 3 1993

RECEIVED

Comment Letter

RM 93-8

No. 147

J. FRED MACDONALD,
MEDIA CONSULTANT

November 26, 1993

Ms. Dorothy Schrader
Copyright Office
Library of Congress
Dept. 100
Washington, D.C.

Re Docket No. RM 93-8

Dear Ms. Schrader:

I write to protest strongly the apparent willingness of the United States government to bend historic laws to suit the financial fancies of the motion picture and music industries. Last year Congress altered the century-old copyright laws, effectively extending protection to all materials since 1964 that might have lapsed into the public domain. Then, the pretext was patently misleading--the far-fetched claim that so-called "widows and orphans" needed to continue receiving their royalties, thereby, I assume, avoiding destitution and welfare.

Now, you appear in a great rush to change the laws again, extending copyright protection for all materials copyrighted from 1919 onward. And the final move in this scenario seems inevitable: to restore to copyright protection all twentieth-century materials already in the public domain. The contemporary propaganda is not fully void of "widows and orphans" sloganeering, but now the pretext is that this extension will synchronize U.S. copyright statutes with those of the European Community, indeed, with the rest of the planet.

Let's be frank about all this. This is not about gray-haired widows and hungry orphans. We are talking about transnational motion picture corporations with deep ties to the music publishing industry who are seeking to own popular culture forever. They may be headquartered in Hollywood, but their leadership is multinational and their focus is global.

Their goal is to rationalize the cultural business of the planet, streamlining process, homogenizing product, and take their cut in every possible commercial venture. To do this they must break down all sovereign laws of the United States that stand in their way. And the laws concerning copyrights and public domain are in their way.

Public domain is a constitutionally-prescribed reality of U.S. law. It affords unfettered use of cultural products that have lost their protection. It allows other artists and businesses to generate commerce from our old and discarded cultural legacy. Today it produces millions of dollars in profits and taxes. But it is controlled by countless small businesses and public archives that have found, preserved, and recirculated films to which the large corporations have no ownership rights.

As the owner of an historic film archive in which public domain footage is an integral part of my viability, I am greatly distressed that you now appear poised to close off public domain access for most twentieth-century productions. Without the maintenance of current copyright laws, my business is in jeopardy. In fact, the businesses of most other small entrepreneurs and public archives (among them the Library of Congress) are in similar danger.

What about our widows and orphans? Are our rights to be crushed under the weight of the transnational film corporations? Each year, we generate millions of dollars in local, state, and federal tax revenues through our sales. Each year we feed and clothe our families with our profits. Is all this to be quashed now that these global behemoths wish--and, apparently, have the appropriate muscle in Washington--to change the rules by which we honestly have played for years?

What is this public domain footage? It is vintage TV shows and educational films whose copyrights were allowed to lapse. It is old industrial films commissioned by large corporations such as General Motors, United Fruit, Monsanto, and DuPont, but never copyrighted. It is the films of World War I vintage that are chronologically beyond the reach of copyright protection.

What do we actually do with public domain footage? We rescue it from places as obscure as trash bins and forgotten attics. We clean it, warehouse it, and preserve it. Some of us hold this rare film until a documentary maker of a movie studio needs it. Some of us market public domain films directly to the public, thereby enriching the public experience. Without us, much of our nation's film legacy would be lost forever. Without us the general public would be less informed, less entertained, and less free.

I am not talking about *Citizen Kane* or *Casablanca* here. For the most part, our business is with obscure, abandoned, and ephemeral films--educational shorts such as *Dating Do's and Dont's* (1949) and *From Pig Iron to Steel* (1927)--and industrial titles such as *The Story of Sears in America* (1951) and *The Silver Streak Pontiac* (1934).

This is not great theatrical fare, but it is part of the historical record of the United States. Properly presented, it helps to explain our past. Left to the care of its original owners, it was discarded; rescued by the entrepreneurs of stock footage archiving, it has been preserved for reintegration into the public consciousness.

My own clients are varied: from Hollywood studios shooting feature films, to advertising agencies making commercials, to the various TV networks reporting the news. MacDonald & Associates footage was utilized by Blackside Films in its *Great Depression* series that recently appeared on PBS. It appeared in feature films such as *JFK* and *Ruby*. Shell Oil in London used our public domain footage in making a corporate film treating the history of the automobile. And documentary producer Ken Burns has used our holdings to explain the nation's history through film.

Public domain is a wonderful reality inherited from the wisdom of our forefathers! And now you are hurrying to crush it in the name of a few monster companies wishing to own and control all the popular culture produced in the twentieth century. After my company and others have played fairly, and invested deeply under the old laws, these transnational monopolies now wish to change the rules. This must not be allowed to happen. Our future as small businesses is as stake

As well as being the owner of a film archive, I am a professor of history at Northeastern Illinois University. During my quarter-century there, I have written six books on the history of broadcasting. I know of what I speak when I say that this issue also involves the future of U.S. sovereignty. When you begin to alter U.S. laws so they conform to the laws of other nations, are you not allowing global concerns to change organic American laws? Are laws grown from the history of the United States now to be reshaped to match the laws of other countries? Are U.S. verities no longer valid? Is the Constitution at risk?

Where will these vertically-integrated media monopolies stop? Where will this rush to adopt other countries' laws leave the distinct and wonderful U.S. laws that have grown from within our national historical experience? Do not be distracted by the Hollywood propagandists--what is at stake here is the future of mass culture (and, therefore, much of mass understanding) in the coming century.

I urge you to reopen preliminary hearings on this issue. Without lobbyists and the other accoutrements of modern politics, we cannot fight for our rights unless we have the opportunity to speak out. You must give us our chance to be heard. And ultimately, you must stop this rush to extend copyright protection and cede our future to a few transnational conglomerates.

Sincerely,

J. Fred MacDonald

J. Fred MacDonald, Ph.D.
President

Book, "One Nation Under Television" submitted by above commentator made part of official file. mg

GENERAL COUNSEL
OF COPYRIGHT

DEC 3 1993

RECEIVED

241

337 Old Leechburg Road
Pittsburgh, PA 15239
November 24, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100, Washington, DC 20540

Comment Letter

RM 93-8

No. 148

To Whom it may concern:

It has come to my attention that a 20 year extension of copyright proposal (Docket No. RM 93-8) is soon to be submitted to congress. It is my opinion that such an extension is a bad idea, and I am writing to voice my personal opposition to it.

The finite nature of copyright, outlined in the United States Constitution, secures exclusive rights on copyrighted works for "limited times", thus creating incentives for writers and artists to create new works. Works in the public domain represent a constant, consistantly available inspiration to artists and writers. The works, which merit analysis and documentation by art scholars and historians, are crucial in understanding and tracing the impact of past works upon those of the present. Restoring copyright protection to works of literature, music, and film already in the public domain (and to work of imminent public domain status) would create an artistic and historical void, as well as render unavailable a potential fund of influence and inspiration to young artists, thus defying the world's creative process as well as stunting its artistic (cultural) development.

The current copyright law protects works of individuals until 50 years after the creator's death and works for hire for 75 years. This seems a generous term when one considers that few artists could conceivably live to reap the "benefits" of a copyright extension. Being a writer, songwriter, artist, and musician myself (I have used copyright law to protect my work in the past), I would like to think that I create for the world's benefit as well as mine. I would also like to believe that after my death, there exists the possibility for my works to live on: to inspire, to be analyzed, and to be recognized and placed into its proper perspective as one small part of the universal artistic development of the world. I consider it a great (and inspirational) honor to believe that the world could someday benefit, even in some small way, from my creative works; and I would hope that *every* artist creates partly out of this belief.

The desires of the copyright holders seem to be in the interest of *depriving* the public of these works rather than making them accessible. Take for example the few large companies whoholdthe rights to many old motion pictures. The vast majority of these works goes unreleased, sitting on shelves, benefitting no one because it is of only nominal finacial gain (if any) to the copyright holder. These works, many of

great historical importance, may be currently preserved by archives (using Federal funds) but are still inaccessible to the public.

The proposed copyright extension, if passed, would have a detrimental effect upon artists, art appreciators, and the general public; the proposal is unfounded, and there is little money, if any, to be made by anyone in depriving the public part of its own artistic heritage.

Sincerely,

Daniel M. Klasnick

2

Michael Dean
226 Wilson Street
Newark, Ohio 43055
November 27, 1993

Ms. Dorothy Schrader, General Counsel
Copyright Office
Library of Congress
Department 100
Washington, D.C. 20540

Dear Ms. Schrader:

I recently learned that Congress may be considering yet another change in the copyright laws that affect "works for hire," specifically motion pictures.

I understand that a major element of the proposed legislation is the reinstatement of copyright protection to motion pictures that have been in the public domain. I believe that such legislation should not be enacted, and is not in the public interest.

If I may, I would like to give a personal example to demonstrate why I believe such legislation is not in the public interest. I have been able to view and enjoy some of the thrillers produced during the 1930's and 1940's by such companies as Monogram Pictures and P.R.C. (Producer's Releasing Corporation). I was finally able to view these motion pictures only because (1) a television station in my broadcast area had public domain prints in their film library and was free to telecast them and (2) they were available for sale at low cost on "public domain" or "bargain" label videocassettes. If it were not for the public domain status of these films, my chance of seeing any of them would be virtually nonexistant.

The concept of public domain is an important part of the copyright laws. It allows creative works to become more widely available to the public after an appropriate period of copyright protection. Motion pictures fall into the public domain because they have been neglected or abandoned by the original creators or distributors.

I am also greatly concerned about the affect such legislation would have on libraries, museums, archives and other institutions that are currently working to find, restore and preserve motion pictures from the past. If such legislation is passed, it would prevent these institutions from even doing such basic work as copying old motion pictures from perishable (and sometimes highly volatile) nitrate film to more stable safety film. I feel that this work is important especially since it has been estimated that over 50% of the motion pictures produced before 1950 are now regarded as "lost" with no negatives, preprint material or even a single print known to exist.

It would also be highly inappropriate to restore copyright status to the original owners for those motion pictures that have already been preserved by other institutions with the use of public funds, or the direct financial contributions of the American public.

If copyright status was restored to motion pictures already in the public domain, the public would lose the accessability of public domain prints currently held by television stations (through breadcast), public libraries, universities and other institutions.

Most older copyrighted works, such as books and recordings, can be used by the public through the purchase of used copies, or by borrowing them from libraries (including interlibrary loans). Motion pictures however were not produced in many thousands of copies. Needless to say, the vast majority of the American public does not have access to the equipment to run 35mm or even 16mm prints.

With the incredible success of home video during the 1980's, a number of companies, both large and small, have been established that make videocassette copies of public domain motion pictures available to the public. Many of these motion pictures have been unseen by the public for decades. There are examples were a video master has been produced from the only known surviving print of a motion picture. If copyright protection were to be restored to public domain films, these companies would be forced out of business and these motion pictures would never again be available to the public.

Motion pictures that have fallen into the public domain because the original copyright holder no longer exists, or through neglect or abandonment, should remain in the public domain where they can be preserved and remain available to the American public.

Sincerely,

Michael Dean

245

COMMITTEE FOR FILM PRESERVATION AND PUBLIC ACCESS

GENERAL COUNSEL
OF COPYRIGHT
DEC 9 1993
RECEIVED

Comment Letter
RM 93-8
No. 150

11/27/93

To: Dorothy Schrader
From: Gregory Luce

Dear Ms. Schrader,

I respectfully request that my enclosed thesis be entered into the official record pertaining to Docket No. RM 93-8 and the Copyright Office hearings of September 29th.

If you have any comments or questions pertaining to the enclosed text, please call or write.

Thank you very much.

Sincerely,

Greg Luce

cc:

William Hughes
Dennis DeConcini
Mark Hatfield
Bob Smith

2747 Shannesy Drive, Medford, Oregon, 97504 503-734-3175

COPYRIGHT EXTENSION AND RESURRECTION

CONTROLLING THE MARKETPLACE, CONTROLLING THE CULTURE

By Gregory J. Luce

I am writing to voice my opposition to the proposals of copyright extension as put forward by representatives from the music and motion picture industries at the Copyright Office hearings of September 29th, 1993, (Docket No. RM 93-8). I am a member of the Committee For Film Preservation and Public Access. While our committee is officially on record as opposing only the proposal for extending copyright protection for works for hire from 75 to 95 years, I'd like to state for the record that I also have serious misgivings about the proposal to extend copyright protection for works by individuals. Also discussed at the September 29th hearings were loosely offered proposals for the resurrection of copyrights for works already in the public domain. Our committee vigorously opposes any attempts in this arena as well.

PROPER PROCEDURE?

The members of the Copyright Office have done a tremendous service for the country over the years, collectively and individually. However, it seems possible that the procedures used in implenting the September 29th hearings may not have been in the best public interest. It appears the only public notice used by the Copyright Office to publicize these hearings was the one that appeared in the Federal Register. However, it seems doubtful that any of the parties that testified became aware of these hearings through this notice. If these parties found out through another source, it was probably directly or indirectly through officicals at the Copyright Office itself. Yet, since the list of those who testified was unanimously in favor of copyright extension or resurrection, one must at least raise questions as to the neutrality of the Copyright Office in this matter. Is it proper for the Copyright Office to hold public hearings on a matter that it gives the outward appearance of having already taken a position on? Should the Copyright Office even *take* a

position on such an important issue without having had objective, well balanced public hearings on the matter. Although it's unlikely there was any intentional favoritism on the part of any Copyright Office official, an impartial observer might reasonably conclude from the way the public hearings unfolded that the Copyright Office had taken a premature position in favor of extension, and then allowed the deck to be 'stacked' at the hearings in favor of groups and individuals whose views and testimony were deemed more desirable. It should also be pointed out that the notice in the Federal Register made no mention of copyright extension for works for hire, yet this was discussed at length by those who testified. Ironically, the primary consideration given within the text of this notice for extending protection for works by individuals was that it would bring the U.S. in line with the European Community's already approved extension of 'life plus 70'; yet the proposal from the Sept. 29th hearings to extend protection for works for hire to a total of 95 years does exactly the opposite; our current term of 75 years already being *5 years longer* than the new 70 year term for works for hire approved by our European counterparts. Clearly, protocol dictates that seperate hearings should be held regarding any proposed changes in the present term of protection for works for hire.

A DESTRUCTIVE CULTURAL POTENTIAL

The proposals for copyright extention and resurrection contain a hidden, culturally destructive potential. This potential could be used by certain corporate elements of the music, literary, and motion picture industries to realize the virtual monopolization and privatization of American culture of the 20th century. There seems to be a sustained movement by these corporate elements to dismantle the entire concept of the public domain as we currently know it in this country. Should copyright extensions and resurrections come to pass, what it will lead to in all probability, is the destruction of the competitive balance that exists within the consumer marketplace for all forms of written, recorded, and visual media. The end result will leave the American consumer at the mercy of the corporate superstructures of these various industries. *They* will control the price structures. More importantly, *they* will control the information: A cultural monopoly.

WHAT WILL THEY DO, AND HOW WILL THEY DO IT

Proposals to extend protection for works by individuals from 'life plus 50' to 'life plus 70', and corporate works for hire from 75 to 95 years were the primary topic of the Sept. 29th hearings. As has happened many times in the past, a number of 'widows and orphans'

were discussed by those testifying and how the perceived unfairnesses of the current limits of copyright terms had affected them. What's tragic though, is that this testimony served as a facade for the hidden agenda of the proponents of change who exploit the misfortune of these individuals in order to help realize long range goals of a different nature.

Should copyright extensions be eventually granted by Congress, the next goal will be resurrection of copyrights for works that have already fallen into the public domain. If these goals of extension and revival were achieved today, all published works going back to the *turn of the century* would suddenly be thrown back into a state of copyright, regardless of whether or not any traceable owners were still in existence. The legal confusion and litigation that would arise from such a state of affairs is mind-boggling. However, the prospect of tackling this issue head-on is undesirable because of the Constitutional problems it would raise. Therefore, the tactic of choice will be to move forward in a piecemeal fashion. The revival of certain foreign copyrights will come first, the rest later. Arguments for such revivals will be based on the reputed 'past unfairnesses' of U.S. copyright policies towards foreign creators. Also, proponents will argue that it will bring the U.S. more in line with the Berne Convention, (although these same proponents usually fail to mention that when the U.S. subscribed to Berne in 1988 it was *not* retroactive).

However, the Constitutional problems that will arise are extremely formidible, yet they are *already* being addressed. A study, financed by elements of the motion picture industry and other interested parties, is currently underway at the Columbia University School of Law in New York. This study is working specifically at addressing these issues and may actually attempt a *reinterpretation* of the portion of the Constitution that pertains to the concepts of copyright and public domain, as well as past court decisions dealing with the same subjects. Once a Constitutional framework is developed, the next step will be legislation to implement these foreign copyright revivals, (annex 1705.7 of NAFTA is the first step in this direction). When this is accomplished, revival of U.S. works will come next, which at this point will be much easier. After all, what better argument could there be than to point out the obvious unfairness of a government policy that revives copyrights for foreign citizens, but not for its own.

HOW COPYRIGHT EXTENSION AND RESURRECTION WILL AFFECT THE AVERAGE AMERICAN CITIZEN

The fact of the matter is that the proponents of copyright extension and copyright resurrection want to be paid for <u>all</u> usage of <u>all</u> pertinent works; to control these works availability, and to control the price structure of the media marketplace. However, the

motivation here is not so much the prolonging or recapturing of exclusive rights on various works, as it is in gaining *the effect* that massive copyright extensions and ressurrections would have on the market place. What is known as the 'public domain element' of the market would literally be shattered. This element provides the competitive balance that helps keep consumer prices down on items such as video cassettes, books, sheet music, and so forth. Public domain novels and short story collections are priced lower on the average than the majority of their copyrighted counterparts. There are *millions* of low income children whose parents cannot afford to buy them Disney or Warner cartoon collections on video when forced to pay $14.95 or $19.95 per tape. However, these same parents can easily afford to buy from the multitude of public domain cartoon collections currently available. These collections usually run much longer than Disney products and can be purchased for as low as $1.99. The same is true with feature films. Yet, the proponents of copyright extension and revival would have us believe that this is not the case. On page three of his written submission to the Sept. 29th copyright hearings, George David Weiss, the President of the Songwriters Guild of America wrote:

"And when a copyright enters the public domain, there are no gainers; only losers. ..the marketplace..does not pass on to the public any savings supposedly achieved by using or adapting a public domain work....Is any book, movie, or recording sold to the public at a reduced price because its subject matter has entered the public domain? Name one! Only the creator loses."

This statement is *completely* entrenched in utter naivety. Its erroneous nature, even absurdity, is positively flabbergasting. In the area of movies alone there are literally *thousands* of examples of public domain items being priced drastically lower than copyrighted product. Walk into any K-Mart, Walgreens, Target, Wal-Mart, or any other national chain store and randomly pick out a dozen or so titles priced at $8 and under and you'll find that the majority of the tapes you've selected will be public domain product. When you get down into the $2-$5 range virtually *everything* is public domain material. Considering the price of new releases of copyrighted films, which usually start out at around $10 and can range up to $70 and sometimes even higher, it's not hard to see that public domain releases are clearly a savings to the American consumer. Although there is probably no known, hard research along these lines, it's probably very much within reason to conjecture that the difference between the average cassette price for public domain videos as opposed to copyrighted videos is very near $10 *per tape*, possibly more.

Proponents of extension and resurrection are often quick to point out that many public domain video items use 'below average' film elements for video mastering. Tapes are often recorded in the visually inferior EP mode. The public 'suffers'. Yet, no responsible person would *ever* propose that an inexpensive economy car should be taken off the market simply because it fails to meet the same standards as a Cadillac. The public *needs* the economy car. It should also be pointed out that neglect by the original copyright owners is what led to the eventual loss of quality film elements on many, if not most public domain film titles. Ironically, the public is forced to pay for the preservation and restoration of the best quality film elements to thousands of motion pictures, as their negatives are housed at the Library of Congress and other archives that are funded fully or in part by taxpayer dollars. Only very limited public access to the smallest fraction of these publicly preserved works is ever allowed; and only with the express permission of the donor, even *after* the expiration of copyright! Where is the public benefit?

HOW IT WILL AFFECT EDUCATION

If Congress endorses copyright extensions and revivals, there's no question that the area of education will be affected in a profoundly negative manner. There have been thousands of educational documentaries produced over the years that incorporate public domain film clips. Such documentaries are *essential* to a national educational system that continues to place a stonger emphasis on education through visual works with each passing year. Film clip footage prices are staggering for copyrighted material, sometimes amounting to thousands of dollars for a simple 5 or 10 second clip. Sometimes copyrighted film clip footage isn't even available. Many educational film makers would be unable to finance or complete their projects if they had to depend solely or even in part on copyrighted clip footage. If copyright extensions are granted, particularly for corporate works, there'll be no new public domain footage available for educational film makers for the following *20 years!* As if this isn't bad enough, try to imagine the scenario in which copyright resurrections are granted. These thousands of educational documentaries would suddenly find themselves containing copyrighted footage that was previously public domain. Harry Truman would roll over in his grave.

Similar effects will be felt in the area of literature. There are countless, interesting non-fiction books, novels, magazine articles, short stories, instruction manuals, and more which have been taken out of public circulation by copyright owners who have no intention of making them available again because of their 'lack of commercial value'. In fact, for many

of these works, all that is limiting their availability to the public again is the expiration of their copyrights. Much of this forgotten literature has great educational and historical value in spite of the 'below average' commercial value placed on it by their owners of copyright. Libraries, public schools, universities, and other educational institutions commonly aquire this type of literature which is made available to them from publishing houses that specialize in public domain material. Yet, copyright extensions, if implemented, will guarantee that there'll be no new public domain literature available for a *20 year period*. That means for two decades there'll be no new materials of any kind made available for promoting the "progress of science and the useful arts" and the wide dissemination of those works that the Constitution guarantees.

All of these arguments can be applied to the area of music in education, as well.

HOW IT WILL AFFECT AVAILABLE CULTURE AND FUTURE CREATIVITY

One of the great benefits of the concept of the public domain is that it encourages greater creativity. As various books, songs, and movies fall out of copyright they are widely disseminated. This wide availability spawns greater creativity in the creators of new works. In the Committee For Film Preservation and Public Access' current copyright thesis, author David Pierce points out a fine example of this:

"It is due to the worldwide public domain status of Gaston Leroux's 1910 novel, "The Phantom of the Opera" that there are three completely different stage musicals touring the United States."

Pierce also cites the example of the public domain 1909 novel, "The Secret Garden" which inspired both a Broadway musical and the creation of a new screenplay which was later made into a major motion picture and recently distributed by Warner Bros.

From the 1920s and 1930s alone there are countless books, songs, motion pictures and other published works that are no longer available to the public because of apathy on the part of their copyright owners or the lack of any 'traceable' owners. One of the major benefits that the public domain provides is to allow these forgotten works to become available again.

Many of our greatest film makers have been inspired and continued to be inspired by older filmworks, many of which are in the public domain. Looking ahead at the next ten years, hundreds of surviving films from the silent era are due to pass out of copyright. Yet, the actual number of copyrighted silent films that have been made available to the public

by their owners over the last decade through the mediums of television or home video, is almost negligible. The extension and resurrection of copyrights will result in the continued 'vaulting' of an enormous chunk of 20th century film history with no public access whatsoever.

There are thousands of copyrighted literary and musical works of all types that have been out of print for decades. All the public benefit that could be derived from the resurfacing of these works will remain unrealized. New works that might be inspired by the availability of these older works, will never come to pass. They will all remain unseen, unread, and unperformed.

The obvious question is, why do the corporate entities of the entertainment marketplace refuse to make these forgotten, copyrighted works available? The reason is simple. There is no real profit for them *on the levels of commercial expectancy that they are used to dealing with.* These works simply wouldn't be able to generate the type of financial returns expected in order to achieve the desired level of commercial success. However, just because these lesser known works don't have the ageless, mass market commercial potential of works like "Gone With the Wind" or "Rhapsody in Blue", doesn't mean they deserve the eternal oblivion that may ensue if copyright extensions and resurrections are granted. These works have an enormous educational, historical, cultural, and entertainment value that simply musn't be suppressed. Future, new works of great importance may remain unrealized because of the lack of access to the inspirational potential contained within these forgotten works. Universities, libraries, public schools, film societies, archives, private individuals, and many others would reap great rewards from the the benefits of unrestricted public access. Smaller companies that deal in book publishing, television distribution, home video, cable TV, music publishing, and so forth; whose operation costs are much lower and whose commercial expectations of such product are not nearly so high, can once again make these forgotten treasures readily available to the general public where their former copyright owners could not. Indeed, their eventual falling into the public domain will open the door to the rediscovery of these presently confined works and the many cultural benefits contained therein.

A PRIME EXAMPLE OF PUBLIC DOMAIN BENEFIT

In the early 1970s Nonesuch Records, a company that specialized in new recordings of public domain works, issued a newly recorded album of Scott Joplin piano rags. Teresa Sterne, who was at that time the President of Nonesuch Records, told this writer that Nonesuch was very conscious about the economic benefits of using public domain materials

for their many classical, folk, and jazz oriented albums. When the concept of the Joplin album was presented to company owner Jack Holtzman, the first thing Holtzman asked about the music was, "Is it public domain?". As it turned out, most of it was, and their new recordings of Joplin rags went on to become the most successful album in the history of Nonesuch. Before this, ragtime had been all but forgotten, but the Joplin album sparked a national revival of ragtime music. Director George Roy Hill heard the album and fell in love with the music it contained. He later incorporated it into his movie, "The Sting". Marvin Hamlisch's newly created band arrangement of "The Entertainer", a 1902 public domain Joplin rag, went on to be the number one selling record of 1974, selling millions of copies worldwide. During this national reinterest in ragtime a multitude of professional musicians (this writer included) found gainful employment playing and recording *new* ragtime compositions, as well as the older classics. A new generation of Americans came to know an entire genre of music that had been nearly completely forgotten. Ragtime was studied in college music departments; rags were taught by piano teachers; and new arrangements of classic rags were performed by high school bands. This is a *prime* example of the creative benefits of the public domain. Copyright extensions and resurrections would seriously reduce the cultural growth that results from this benefit.

All of this brings us to the subject of legendary ragtime composer and pianist, Eubie Blake. In his written testimony to the Sept. 29th copyright hearings, Songwriters Guild President, George David Weiss cited the plight of Blake as an example of the unfairness of copyright loss:

"Twenty years ago, when testifying before the House Joint Committee urging enactment of the legislation which eventually resulted in the 1976 Copyright Law, Eubie Blake, then in his 90's, delivered an urgent plea for the extension of the copyright term, since his most famous song, "I'm Just Wild About Harry" was on the edge of entering the public domain, thus jeopardizing a major source of his income."

Yet, it is Blake himself that helps provide the quintessential proof of the benefits of the entire concept of the public domain. If Blake suffered any real financial misfortune during his lifetime it had very little to do with copyright law, but rather, with the color of his skin. As a black musician he was forced to spend his early years playing in saloons and houses of 'ill repute'. During this time, the music industry treated most black musicians with utter disrespect, seldom offering them employment in legitimate surroundings and often inducing them to sell their finest music outright with no royalties whatsoever. It was shameful. Blake, one of the greatest musicians in American history, was fortunate enough

to cross the color barrier with a series of successful Broadway musicals in the 1920s. Although he was able to achieve a definite amount of success in a music industry that was extremely racist, it's staggering to think of how much money he would have made had he been white.

When the ragtime revival of the 70s hit, Blake, who was in his late 80s and had been semi-retired for years, suddenly found himself thrust back in the spotlight. From 1971 until his death in 1983 at age 100, Blake was probably busier and more financially successful than at any time in his career. He was constantly seen on TV, including frequent trips to Johnny Carson's *Tonight Show*. Personal appearances and live performances were in abundance. He made many new recordings and saw much of his music published again for the first time in decades. Many of Eubie's previously unpublished and newer compositions were published and recorded, as well. During this time the public, as well as Eubie Blake, saw the true benefit of the public domain.

A DANGEROUS DRIFT

If all this seems a bit overblown, then simply examine the recent history of copyright legislation. The Copyright Act of 1976, which took effect January 1st, 1978 extended copyright protection for pre-1978 works from 56 years to 75 years. Current protection now provides a term of 'life plus 50' for works by individuals and a 75 year term for corporate 'works for hire'. In 1988, the United States joined the Berne Convention. Shortly after, the mandatory requirement that all published works be affixed with a proper notice of copyright was abandoned. Then, in 1992 Congress passed a bill that eliminated the need for mandatory copyright renewals on all pre-1977 works that still fell under the old 'two term' copyright system. Works from 1964 through 1977 would be 'automatically renewed', even if no renewal registration was ever sent in by the owner of copyright, (Public Law 102-307). Currently pending in the House of Representatives is a bill that, in its original text, would virtually do away with any legal need to even *register* works for copyright, (H.R. 897, "The Copyright Reform Act of 1993"). You get the drift.

All of this is bringing us closer and closer to a culture almost completely dominated by the corporate few. In the long run, if copyright extensions and resurrections come to pass, competetive balances will be destroyed and the citizens of the United States will be left with the nearly complete, multi-corporate monopoly of the written and recorded culture of the 20th century.

It is time to take a stand. Protect our citizens and our great culture from this terrible injustice. Please *oppose* the extension and resurrection of copyright protection.

255

KEN CAYRE
EXECUTIVE VICE PRESIDENT

November 29, 1993

Dorothy Schrader, Esq.
General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC 20540

Dear Ms. Schrader:

GoodTimes Entertainment company is a dominant leader in the home video sell through market today. My brother and I founded GoodTimes Home Video in 1984. Today we are an international multimedia entertainment organization expanding into areas of television production and multimedia. The GoodTimes Entertainment International division licenses and markets all GoodTimes products for worldwide distribution.

Our catalog includes more than 2800 titles categorized by Drama, War, Western, Horror, Sci-Fi and Comedy, as well as family programming. Our company is vertically integrated with internal control of acquisition, production, manufacturing, and distribution. Our state of the art facility in Bayonne, New Jersey has the capacity to duplicate 72 million videos annually and incorporates an in house computerized automatic replenishment system that inventories retail outlets. Our tapes can be found in wholesale clubs, video specialty stores, entertainment and music stores, toy stores, book stores, convenience stores, drug chains and supermarkets.

The reason for this letter is Goodtimes's opposition to the proposed extension of copyright term for authors and works for hire for 20 more years The public will pay for this extension in increased cost of goods. We noted in the announcement a reason for the change can benefit the public since "(t)he public frequently pays the same for works in the public domain as it does for copyrighted works, and the only result is a commercial windfall to users at the authors expense. " We must question this assertion.

Our copyright law is founded in the Constitution. Public domain IS NOT at the authors expense. The author has received a term of copyright protection and has had exclusive use through federal law for the copyright term. Their ideas were originally

16 EAST 40TH STREET • NEW YORK, NY 10016 • (212) 951-3005 • FAX (212) 889-7877

drawn from the pubic domain. It is **just** and **right** for the work to enter the public domain once again after this term. The public domain is preserved, and knowledge is promoted. Public domain is needed, just as protection of the author is needed for a limited term. Public domain is fair and just, as protecton of the author is fair and just.

GoodTimes is well known in the home video industry for offering the best in home video entertainment for the lowest possible price. We both license product, and use product which is in the public domain. Public domain is used in documentaries, compilation, and is released in it's entirely.

The majority of GoodTimes videos are priced to sell for under $10.00 with most retailing for just $5.00. Good business economics simply dictates we can, **and do**, pass savings on to the consumer through public domain. Competition fosters lower prices, when more than one company distributes a title. The public benefits with varied offerings and low prices through the public domain.

The consumer ultimately pays for licensing fees when they are required. They are simply added to the price of the finished product. Licensing fees are a major consideration when arriving at a final price for a video.

At GoodTimes, the public domain **does not** mean an inferior product. We offer quality images, attractive packaging, and affordable price. Public domain benefits the consumer, and we offer a product with entertainment and historical value.

We are a domestic company licensing and marketing our products internationally through Goodtimes Entertainment International. We employ American workers, pay taxes, contribute to the United States economy, and help the trade deficit. This extension would **not** be beneficial to GoodTimes, and it would **not** be beneficial to the Unisted States economy.

The extension should not be considered primarily on the harmonization issue, but on the domestic impact. If public domain was altered through this extension, the increased costs of material would ultimately be passed on to the United States consumer through higher prices. It will, in some cases, stop the distribution of a work entirely due to unrealistic expectation for licensing fees.

We ask the Library of Congress to oppose the extension for the reasons put forth. Copyright holders will benefit financially from the extension but clearly, copyright changes should be considered in light of **the Public Benefit.**

257

Summary

The proposed 20 year extension of copyright for works for hire, such as motion pictures, to 95 years will contribute to the near complete inaccessibility of a large portion of our motion picture heritage. This proposal should not be submitted to Congress. The reasons include:

- U.S. copyright extension is not compatible with the European proposal.
- This is contrary to the purpose of copyright outlined in the United States Constitution
- It benefits a handful of large companies, with no public benefit
- These are the same companies that allowed so much of our film heritage to be nearly lost in the first place, then donated the survivors to film archives
- Archives have preserved the studio-owned titles with Federal funds, yet the films are still unavailable.
- These films are of great educational and historical importance
- Public domain is used to create new works, such as documentaries and education films

Very truly yours,

Ken Cayre
Executive Vice President

cc: President William Clinton
Vice President Al Gore
Senator Dennis DeConcini
Representative William J. Hughes
Senator Daniel Patrick Moyniham
Senator Alfonse D'Amato
Congressman Charles Schumer
David Pierce
Greg Luce

KC/cai

259

SILENT MOVIE
SHAPE OF LAUGHTER PRODUCTIONS
611 N. FAIRFAX AVE LOS ANGELES, CA 90036

LAURENCE W. AUSTIN (213) 653-2389

November 01, 1993

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Dept. 100, Washington, D. C. 20540

Dear Honorable

As the owner and operator of the **WORLD'S ONLY SILENT THEATER**, it's imperative that we express our concerns regarding the extension or alteration of copyrights. In February 1942, John and Dorothy Hampton founded the **SILENT MOVIE.** At that time, there was no interest in preserving or saving silent films. Through John and Dorothy's Hampton's efforts, they were among the first to realize the value of our heritage, and for many years saved many silent movie films from disappearing forever which ended in tragedy, as Mr. John Hampton paid the price with his very own life after being exposed to the chemicals used to restore and save films.

The **SILENT MOVIE** continued with Dorothy Hampton and myself. To date, we have a large following, and what appears to be a vast interest from all ages that frequently fill the theater to full capacity. It really surprises us that the larger percentage are younger people. Dorothy and myself are continuing the fight that John Hampton started in 1976 against extension of the copyright law, or (the 75-year copyright term).

We would like to point out that Federal funding (as you already know,) has never been sufficient for the **"Library of Congress"** to save and preserve films. At the present time, they do not even have one of our most necessary pieces of equipment, (COMPUTER) so they can maintain and record our great nations growth progress in the wonderful world of film art. Unfortunately, Government has failed to provide the proper resources once again for a historical project that many in this nation feel should of had more attention and consideration. Untold thousands of films have been lost, never to be seen and enjoyed again. It's time to correct the mistakes of the past. Time to enforce the copyright laws as it was originally intended, (FOR THE ORIGINAL OWNER / CREATOR TO MAKE A REASONABLE AMOUNT OF CAPITOL / MONEY, AND THEN PASS THE WORK ONTO THE PUBLIC FOR IT'S USE.)

(continued from page one)

Now the studios or a few manipulative individuals want to keep the revenue forever and change something that can be considered a violation and rape of our heritage. What ever happened to, (what's good the greater and not for the individual?) I wish you would tell the public, I'm sure it would be a statement that would attract attention, "if you really enforced it."

The 75 - year copyright term for motion pictures in the United States is already the longest in the world. Nevertheless, the U.S. Copyright Office is expected to propose this fall that Congress extend the copyright term for motion pictures to 95 years, withholding our film heritage for an additional 20 years. This proposed 95 - year copyright term would be disastrous for research and enjoyment of classic cinema, ensuring that many movies would be experienced not by the eager audiences they deserve, but continued through articles in scholarly journals. (Sir's & Mam's, unfortunately people do not live for hundreds of years.)

even worse, the proponents of copyright extension are already preparing for the next step: restoring the copyrights of films that have been in the public domain for up to fifty years. This would include such classics as Douglas Fairbanks, "THE MARK OF ZORRO" (1920) and Buster Keaton's, "THE GENERAL" (1927). Taken together, term extension and copyright retroactively would bring Edwin S. Porter's, "THE GREAT TRAIN ROBBERY" (1903) back under copyright protection, (actually, such a proposal is a violation of our great CONSTITUTION!)

NOTE: THE PROPOSAL FOR COPYRIGHT EXTENSIONS

Music publishers and songwriters propose extending by 20 years the current U.S. copyright term of the life of the author plus 50 years for works by individuals, such as movies and songs. The stated purpose is to bring the United States "in sync" with the European Community, which has proposed (but not yet adopted) a copyright term for works by individuals of "life plus 70." The proponents of "life plus 70" also propose extending the U.S., term for "works for hire" such as motion pictures, from the current 75 years to 95 years.

However, they fail to note that the current 75 - year term for works for hire in the U.S. is already longer than the 70 - year term for such works which has been proposed (but not yet adopted) in the European Community. Indeed, the current term for motion pictures in most pictures in most European countries is 50 years.

At a hearing before the Copyright Office on September 29, only those favoring these extensions testified. The announcement of the hearing in the Federal Register only discussed works by individuals, and did not mention the proposed extension to films and other works for hire. We believe that the large corporations recognize that if the proposal to extend the copyright term for works for hire is debated on it's merits, it will fall. The media conglomerates are hoping to keep this quiet, so their proposal can simply sail through Congress.

(continued from page two)

NOTE: THE EFFECT ON MOTION PICTURES

The proposal to extend to 95 years the current "75-year" term for motion pictures would obviously have it's most immediate effect on the decade of films copyrighted from the year 1918 to 1927. With only a handful of exceptions, these films can be seen only at archives and foreign film festivals. Turner Entertainment and Paramount have released a couple of their major titles, but virtually all the copyrighted survivors of this decade of film history remain on the shelf, unseen in the classroom, video store or on television or cable.

Extending the current term of copyright will guarantee that the public will continue to be deprived of hundreds of films, long ago abandoned by their creators, but still protected by copyright. What opportunity does the general public have to see Frank Borzage's romantic masterpiece, "LUCKY STAR" (1929), recently restored from a print found in Europe; Robert Flaherty's, "MOANA" (1926), filmed on location in Samoa by the great documentariar; the part - Technicolor, "REDSKIN" (1929), a story of the Pueblo Indians adapting to the America of the 1920's, and the legendary original silent film version of "PETER PAN" (1923), with Betty Bronson personally selected by author James Barrie to play the title role?

Thousands upon thousands of nearly forgotten American films are awaiting the freedom of public domain. For many more, public domain is meaningless because their makers lost all copies to poor storage and neglect because sound films became the new wonder and once again, money was the issue over all, (hog wash.) In fact, a 1993 study by the "Library of Congress" documents how the vast majority of films from the silent era have been lost forever due to ownership apathy. The scattered survivors were donated to film archives, which preserve, catalog and store them primarily with Federal funds, (why not the creator or owner, they not only use the government but the people too?) For many of these films, all that is limiting their availability to the public is expiration of their copyrights.

As proposed, the owners of these copyrights do nothing in return for this extra copyright protection. They assume no obligation to preserve their films, make them available, or even grant permission for archive screenings. "WHERE IS THE PUBLIC BENEFIT OR REASON?"

Coming next: Everything is Copyrighted -- Forever....

If this proposal passes, it will not be the last change. In 1976, the copyright term for movies was extended by 19 years. Now in 1993, it might be extended by another 20 years. It may not even take another 20 years for a proposal to extend the period again. The songwriters Guild of America encourages the Copyright Office to recommend giving "perpetual life to copyrights."

One of the main goals of the proponents is to revive the copyrights in all works from the Twentieth Century that have fallen into the public domain.

(continued from page three)

The 28 page submission by the Coalition of Creators and Copyright Owners specifically solicits restoration of protection for public domain works. They note that Europe is reviving copyrights as it moves to a common term of 70 years from publication for motion pictures. And they point out, the North American Free Trade Agreement (NAFTA) includes a requirement that the United States restore the copyrights of Mexican films in the public domain. In addition, it is well known that Columbia University Law School is currently studying how best to achieve revival of the copyrights in films that have already fallen into the public domain. As incredible as it seems, If these proposals were initiated, all films from 1898 to the present would be protected by copyright. The prospect of such an idea is flat out ignorance, films were not invented until after the turn of the century.

NOTE: THERE IS NO JUSTIFICATION FOR EXTENSION

Before talking of extending copyright, it is important to examine the purpose of copyright. The United States Constitution grants Congress the power "to promote the progress of science and useful arts by securing limited times to authors and inventors the exclusive right to their respective writings and discoveries" (emphasis added).

The public policy of this country has always been to provide limited protection for a infinite term to give creators incentives to create additional works. At the end of the limited term of protection, creative works fall into the public domain for the widest possible dissemination. That is the same philosophy that underlies the 17 - year term for patents. Public domain is an integral part of the creative process, and the courts have been consistent in recognizing this. In Stewart V. Abend, a landmark 1989 copyright case, the Supreme Court noted that copyright serves a higher purpose than just providing income to authors and creators; (the few.)

> Although dissemination of creative works is a goal of the Copyright Act, the Copyright Act creates a balance between the artist's right to control the work during the term of the copyright protection and the public's need for access to creative works. The copyright term is limited so that the public will not be permanently deprived of the fruits of an artist's labors.

Public domain means that creative works are more widely distributed, and the wide availability of ideas contributes to creativity, benefiting everyone. It is due to the worldwide public domain status of Gasion Leroux's 1910 novel "THE PHANTOM OF THE OPERA" that there are three completely different stage musicals touring the United States, Similarly, the public domain 1909 novel, "THE SECRET GARDEN" is allowed to inspire both a Broadway musical and a different interpretation for the movies. Frank Capra's, "IT'S A WONDERFUL LIFE" (1946) was only recognized as a classic when the film fell into the public domain and was widely seen for the first time. Educational producers use public domain footage in their films to instruct and entertain.

(continued from page four)

Documentary filmmakers can afford to make films for specialized audiences because they can get public domain material at reasonable prices from sources such as the National Archives. the news programs on CNN, the broadcast networks and C - SPAN constantly use readily available public domain footage to provide historical insight into current issues

The proposed 20 year extension of copyright for works for hire, such as motion pictures, to 95 years will contribute to the near - complete inaccessibility of a large portion of our motion picture heritage. This proposal should not be submitted to Congress. The reasons include:

** U.S. copyright extension is not compatible with the European proposal
** this is contrary to the purpose of copyright outlined in the United States Constitution
** It benefits a handful of large companies, with no public benefit
** These are the same companies that allowed so much of our film heritage to be nearly lost in the first place, then donated the survivors to film archive at the peoples expense
** Archives have preserved the studio - owned titles with Federal funds, yet the films are still unavailable
** These films are of great educational and historical importance
** Public domain is used to create new works, such as documentaries and educational films

NOTE: HOW YOU CAN HELP THE PEOPLE

Please write a letter opposing the proposal to extend the copyright for works for hire from 75 years to 95 years, (AND FOR GOD'S SAKE, LET THE PEOPLE KNOW WHAT YOUR DOING.) Please make it clear that you also oppose any attempts to revive the copyrights of films that are already in the public domain. Comments must be received by the Copyright Office no later than 'NOVEMBER 29, 1993." Refer to Docket No. RM 93 - 8. If you can't send a letter, then send a postcard expressing your opinion. You should address you letter to:

Dorothy Schrader, General Counsel fax: 202-707-8366
Copyright Office, Library of Congress
Department 100
Washington, D.C. 20540

Since this proposal is expected to be introduced in Congress in the next few months, you also should send copies of your letter to the chairmen of the appropriate committees on Capitol Hill. Their addresses are;

Senator Dennis De Concini, Chairman fax: 202-224-2302
Subcommittee on Patents, Copyrights and Trademarks
Senate Hart Office Building, Room 327
Washington, D.C. 20510-6286

(continued from five)

Rep, William J. Hughes, Chairman fax: 202-225-3737
Subcommittees on Intellectual Property and Judicial Administration
Cannon House Office Building, Room 207
Washington, D.C. 20515-6219

Send copies to each of your Senators and your Representative at:

Senator (name)	Representative (name)
United States Congress	United States Congress
Washington, D.C. 20510	Washington, D.C. 20515

ADDITIONAL NOTE OF CONCERN:

Many studio's destroyed it's negatives on silent movies and burned prints of same on their property. Fourtunately, John Hampton who paid with his life, was able obtain films and restore such grates as: Lon Chaney, "PHANTOM OF THE OPERA".... it is Public Domain..... If it would be re - copyrighted, **should Studios and creators, authors and inventors pay the individuals and estates of the individuals for the work and suffering they forfeited in saving film art.**

Also, many films in public domain and copyrighted status's are still being held back by studios or owners which keep the public from benefiting from them. Shouldn't this become a federal crime if such films are not turned over to the Library of Congress?? Individuals that are currently involved in this type of selfish conduct are in fact violating the present copyright law, *(I hope the public don't find out that certain leaders of our nation want to openly defend criminals)*

All in all, you can see in all fairness how badly this program has been handled. Now is the time to walk the walk that the people want and try to make things right that have gone so wrong over the greed of the few. Please do what is good for change. Do not allow the extension!!

Make a real public effort for an appeal for Congress to modernize the "LIBRARY OF CONGRESS. Increase the funding, increase the staff, make the films available to the public, make a provision that studios must turn over films again, "negative and two prints" for the vaults of the **"LIBRARY OF CONGRESS"**, and most importantly, make it a people project for the greater goodness.

(continued from page six)

Lets put the shoe on the other foot, and try and see the cause and effect this type of action would have on the "great big picture screen" and the "big picture" for (reflective, creative advancement) of all people in this leading nation of leading nations.

Your prompt reply and position on this matter is expected in great anticipation.

We want to thank you for your time and consideration in this matter, don't forget that this if for the people.

Very truly yours

SILENT MOVIE

Laurence W. Austin

LAURENCE W. AUSTIN
BUSINESS MANAGER/OWNER

Dorothy B. Hampton

DORTHY B. HAMPTON
FOUNDER - 1942

265

Comment Letter

RM 93-8

No. 153

2354 Gould Circle
Medford, OR 97504
November 26, 1993

Ms. Dorothy Schrader, General Counsel
Copyright Office, Library Of Congress
Department 100, Washington, D.C.

Dear Ms. Schrader:

I'm writing to oppose the extension of copyright for works for hire from 75 to 95 years. I'm also opposed to the revival of copyrights of films that are already in the public domain.

I feel that these actions would deprive the public of the affordable opportunity to view these films.

Sincerely

William B. Greene

William B. Greene

C.C. to:

Senator Dennis DeConcini, Chairman
Subcommittee on Patents, Copyrights and Trademarks
Senate Hart Office Building, Room 327
Washington, DC 20510-6286

Rep. William J. Hughes, Chairman
Subcommittee on Intellectual Property and Judicial Administration
Cannon House Office Building, Room 207
Washington, DC 20510-6219

Congressman Robert F. Smith
U.S. House of Representatives
Washington, DC 20510

266

GENERAL COUNSEL
OF COPYRIGHT

DEC 9 1993

RECEIVED

Comment Letter

RM 93-8

No. 154

November 26 1993

US Copyright Office
Wash DC 20559

Dear Sir or Madam:

These comments are in connection with the consideration of proposals to extend the period of copyright under the Berne Convention to life plus 70 years instead of life plus 50 years.

The argument for uniformity would be more applicable to making the maximum period life plus 50 since there are only a handful of countries have coverage for more than life plus 50. An exception might be made for local citizenry.

The US constitution recognizes the value of copyright to encourage writings. Any extension of copyright would not encourage writings for material that already exists. Any extension should therefore exempt existing writings. That also makes sense since contracts were made on the basis of the life plus 50. Having different periods in effect is not insurmountable since that already exists under the 1976 Copyright Act.

If nevertheless such an extension ever came into effect US adherence should be conditioned on giving the heirs of writers the right to a renewal copyright, a new estate, with respect to the 20 years. That would give them the benefit of the extension, not the companies that bought rights. The termination arrangement under the 1976 Copyright Act is not satisfactory in this respect since existing derivat works can be used, often without payment to the heirs of the authors. Flat sums are frequently paid, not royalties. Royalties in old contracts are frequently out of date, e.g. 2¢ for sheet music. Any extension that does not address this becomes a bonanza for some companies and is worth zero to heirs, in many cases.

Care must be given that language in existing contracts cannot be deemed to cover such an additional period. There are contracts that give perpetual rights, or rights so long as the copyright andrenewals and extensions exist. If any extension is justified to assist heirs of authors then these protections must be provided. Otherwis the licensees gain a windfall.

The existing period in many cases will lead to copyrights for more than 100 year duration. Since the US copyright contemplates a limited period of copyright, it would appear to me that the existing law should remain and the period not be changed.

Very truly yours,

DG

David Grossberg
635 Madison Ave
NY NY 10022

REF: DOCKET NO: RM 93-8

I <u>oppose</u> the proposal to extend the copyright for works-for-hire from 75 years to 95 years, I also <u>oppose</u> attempts to revive the copyrights of films that are already in the public domain! This is, once again, the large corporate powers cutting-away at the right to Freedom-of-Choice; right to historical educational benefits derived from this once powerful country and the quality of life for anyone of the public that wants and needs it all in the name of power and monetary greed, <u>Please</u> don't do this.

sincerely, Pieter Fuju
res: California

136-034
MARILYN MONROE

I oppose the proposal to extend the copy-right for works for hire from 75 years to 95 years. I also oppose any attempts to revive the copyrights of films that are already in the public domain.

Comment Letter
RM 93-8
No. 156

Dorothy Schrader,
General Consul
Copyright Office,
Library of Congress
Dept. 100
Washington, DC
20540

GENERAL COUNSEL
OF COPYRIGHT
DEC 8 1993
RECEIVED

FC-34
MADE IN THE U.S.A.

Glenn Murray Jumper
586 Brighton Road
Tonawanda, NY 14150

To:
Dorothy Schrader
General Counsel
Copyright Office
Library of Congress
Dept 100, Washington
DC 20540

Dear Ms. Dorothy Schrader,
Through This Letter I would Like to gladly Introduce Myself, to you. My Name is John K. Gant. and I am A resident of Oakland California. And, this is However, the First time that I Have Written to An Important Lady such as yourself, In your position of General Counsel But, I will say that. It is An Honor to Address you, regarding A very Important matter.

This Letter is In Response to the proposed Copyright term, not yet passed.

I would Like to Firstly, Let you Know, That

(3)

In a positive way and takes the Focus off The Violence Already Expressed In Reality, now, That has (Value.)

The "Key" Purpose of This whole Letter to Congress, is to help In Recognizing the Importance of Value, an always Much Needed trait which is out of Focus with Society, But Effective In the Expression of purpose, Value within maintaining & Keeping Entertainme Works For Hire motion pictures (old rare obscure) Already In public domain and Ones not yet For Hire, If It Effects the Emotional Feeling of Sentimentality In the (Minds) and Hearts of The public, a Visual release away From the Face of the Constant reality of Violence, also as opposed to the Now present Movies Which Also Contain the Visual Expression of the Horrors of

(4)

actual reality.

To Effect the Copyright term to 95 years, which if proposed, would Effect Copyrights terms of movies already available as well as, one's not yet Observed or recognized, these movies (as stated Before) are Very rare, obscure, and Unusual. would also subject the Already Existing public, as well as, the Generation's to Come, Exposing them all, to an Increasing Mental picture of Violence, Bloodshed Killing, planned murder's and other Forms of Chaos's.

The now public Loses the display which would reenact Sentimental Feelings, which helps to direct Focus away From Violence at Least, For some, all people are not Affected By Violent Films But some are;

→

Generations after, would have no Example, (meaning grounds For developing sentiments For what Was Left behind, (meaning old movie classics)

"Violence" is a genetic Emotion in all Humans, and is a part of our Nature, and always will be until ("we as a people, open our hearts to the Almighty God In heaven By accepting his son, Jesus christ as our savior believing that he gave his Life on the cross For us, in our hope to him that he will (change our Hearts and minds) For the goodness of his purpose, thereby Eliminating Violence, and all Expressions connected with it.

"Please" do not Extend the Copyrights term For Films For hire From the current 75 year to 95 years. also please do not revive the Copyrights terms For Films already →

In the public domain.

For This would deprive the public of Thousands of Films, Effecting the Value of Mental release From Violence Through Sentimentality, also giving Adults as well as the younger generation a Fixed Mental Picture In their Minds, Leading to Increased Chaos In the World With No hope Beyond Believing that this World is all Bad, thereby Blocking Hope For goodness and a better world to Come

In this Life, There is positive and Negative Expressions, But By Extending the Copyrights For proposed Films and reviving Copyrights For Films Already within the public spectrum Eliminates the mental release of the placing the mind to one partial View of the world.

7

With Violence already in the streets, and then seeing more on TV, and through the new Film market is rough on ones thinking.

John K. GANT
1000 73RD AVE
OAKLAND CALIF
94621

276

Richard Randolph
147 West Fourth Ave.
Denver, Colorado
80223

Dorothy Schrader, General Counsel
Copyright Office, Library of Congress
Department 100
Washington, DC
20540

Dear Dorothy,

In reference to Docket No. RM 93-8.

This is a short letter to tell you that I am very much oposed to a proposal on your desk that would extend copyright for works for hire from 75 to 95 years. I have a small collection of much loved film noir and "B" video movies. It bothers me that other people would be denied the chance to own their own copy of any of these films if the bill goes through as the sponsors want. Over the last decades many movies have reverted to public domain because the origional owners simply dropped the ball. With the law as it stands interested film lovers were allowed to obtain, distrubute, and make available for use the films or parts of films for documentaries and film study materials that have greatly enriched our knowledge and appreciation of this great American art form. Many movies are archived and sold to the appreciative public by individuals and companies who do us all a great service by preserving pieces of American and foreign movie history. I ask that this useful service be allowed to continue.

A QUICK SUMMARY OF WHY THE PROPOSAL SHOULD NOT BE SUBMITTED TO CONGRESS U.S. copyright extension is not compatible with the European proposal /// This is contrary to the purpose of copyright outlined in the United States Constitution /// It benefits a handful of large companies, with no public benefit /// These are the same companies that allowed so much of our film heritage to be nearly lost in the first place, then donated the survivors to film archives /// Archives have preserved the studio-owned titles with Federal funds, yet the films are still unavailable /// These films are of great educational and historical importance /// Public domain is used to create new works, such as documentaries and educational films.

Sincerely,
Richard
Richard Randolph